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JOURNAL OF ETHICS

Devoted to the Advancement of Ethical Knowledge and Practice

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THE INTERNATIONAL
JOURNAL OF ETHICS

OCTOBER, 1915.

OXFORD UNION SOCIETY

ART AND WAR.

CLIVE BELL.

AN acquaintance of mine, a French artist, who used to live in England and paint pictures for which I care nothing but on which the cultured dote, started early in August to join his regiment, leaving behind him his wife and five children. So miserable was the prospect before these that a benevolent lady wrote to some of her rich friends, who happened also to be amateurs of painting, praying them to buy a picture or two and so help the family of their unfortunate favorite. One and all refused, severely giving the lady to understand that this was no time to think about art. Of charity they said nothing; but perhaps they subscribed to some conspicuous fund and put their servants on half-pay.

Charity, however, is beside my point. What interests me in this little story is the unanimity with which the cultivated people agree that this is no time for art. It interests me because I have lately been taken to task for saying that the cultured regard art as no more than an elegant amenity. The war has put my opinion to the proof and I am shocked to discover how much I was in the right. From every quarter comes the same cry—"This is no time for art!" Those galleries and exhibitions which are not closed are visited chiefly by homeless refugees; if

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literary taste goes beyond the newspapers it is only to salute the verse of Mr. Begbie and the prose of Mr. H. G. Wells; even at concerts our ears are exasperated by national platitudes and the banalities of our Allies. This is no time for art. Good taste is unpatriotic; the man who continues to care for painting, poetry or music is little better than a Hun.

That people who in times of peace treat art as an amenity should feel that this is no time for art is, I suppose, natural. That they should expect those who feel that art is the most important thing in the world to do the same seems to me unreasonable. To those who care seriously for art, to those for whom it is a constant source of passionate emotion, the notion that this is no time for art seems as ludicrous as to a Christian mystic of the ninth century would have seemed the notion that that tortured age was no time for religious ecstasy. People who are capable of ecstasy, be it religious or æsthetic, are apt to distinguish between ends and means. They know that empires and dominations, political systems and material prosperity and life itself are valuable only as means to those states of mind which alone are good as ends. Thus it comes about that the things which to the majority are of primary importance, because to the majority they seem to be ends, are to a handful of mystics and artists of secondary importance because to them they are no more than means. They cannot forget about art and think exclusively about war because if they forgot about art the world and its ways would seem unworthy of thought. Public activities and operations they feel are of consequence only in so far as they affect the things that matter,—the raptures of art and religion, that is to say, and abstract thought and personal relations.

It is not reasonable to expect us to turn our backs on absolute good and consider exclusively what may be a means to good. Besides, we could not do so if we would. The artist must think more about art, the philosopher more about truth, the mystic more about God, the æsthete more

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about beauty, and the lover more about the beloved, than about anything else. The fact is, we are not practical people; we cannot adjust ourselves to circumstances, so we must be content to appear imprudent and unpatriotic. We are not masters of our fate; not only have we got hold of what we believe to be the greatest thing in the world, the greatest thing in the world has got hold of us.

A crisis has divided the sheep from the goats—I care not on which hand I am marshalled—and now we know who are the people that love art because they must and who love it because they think they ought to. I am making no moral judgment; I am pointing out merely that those who say "This is no time to think about art" admit that for them thinking or not thinking about art is a matter of choice. I have always supposed that it was perfectly well with one who had lost himself in an ecstasy of creation or contemplation. How can he be better off who has already attained beatitude? To invite such a one to relinquish the best and bestir himself about what may be a means to good seems to me absurd. That has always been my opinion and I cannot conceive the circumstances that would compel me to change it. Those who reject it, those who deny that certain states of mind, amongst which is the state of æsthetic contemplation, are alone good as ends, will find themselves in an intellectual position which appears to me untenable: I shall not quarrel with them, however, so long as they leave us alone and refrain from cant. According to them there are better things than Beauty or Truth or the contemplation of either. I simply disagree: it is only when I catch them wringing their hands over the ruins of Reims that I protest.

Take not the name of art in vain: at least be ashamed to use it for political purposes. Any stick may be good enough to beat Germans with. Beat them if you can: I shall have no tears for them and their strong military government. It is not people like me who will weep for Prussia. But, though any stick may be good enough, some are too good. Besides, however much we love

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France and the French, let us have the justice to remember that if, as seems probable, French soldiers were using the cathedral as a post of observation, the Germans, according to what are called the rules of war, were in the right. In that case it was the French themselves who first transgressed that law which, they now tell us, makes neutral and inviolate works of art. For my own part, I utterly deny that it can ever, in any circumstances, be right to destroy or put in jeopardy beautiful things. But for any of those governments which took a hand in the deliberate ruin of the summer palace at Pekin to prate of vandalism and pose as defenders of art is not only disingenuous but silly. The spectacle of European soldiers and statesmen who, to admonish such evil Chinamen as might persist in defending their liberty and their religion, destroyed without demur the masterpieces of Oriental art, the spectacle, I say, of these people whimpering over the late Gothic of Louvain or the early Gothic of Reims, strikes me as being what the French, if their sense of humour had not suffered more than their monuments, would call "*un peu trop fort.*"

Reims is, or was,—I am not sure whether we are more conscious of what existed before the bombardment or of what we imagine remains—Reims is or was a typical thirteenth century building; and, like most thirteenth century buildings, is or was, to my feeling, of no great artistic significance. That it is a venerable focus of sentiment no one denies; so, I suppose, is the monstrosity of Cologne and the Albert Memorial. I am not concerned with sentiment, but with art. Therefore, I must note that of such artistic value as the cathedral ever possessed the greater part was not destroyed by the German bombardment: it was destroyed when, some years ago, the upper part of the church was made as good as new by the ministry of fine arts. Only the glass, and the sculpture over the little door in the north transept, and a few twelfth or very early thirteenth century figures which had escaped restoration will be a great loss to the world; and, for our comfort, we may remember that the glass was not comparable with the

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glass at Chartres or Bourges, while finer sculpture is to be seen in scores of Romanesque churches. I can listen with admirable patience to tales of damage done to Reims cathedral; but should the abbey church of S. Remi have been injured it would be less easy to pardon the responsible party. S. Remi is a masterpiece of the eleventh century, and was still, when last I saw it, a work of splendour and significance in spite of having suffered at the hands of French architects worse things than it is likely to have suffered from German gunners.

It is a mistake for the English upper classes to assure the world that they prize a work of art above a victory; the world knows better. Are not these the people who were telling us just now that this was no time for art? Is it seemly in them, is it prudent even, to revile their own class in Germany for caring as little about art as themselves? When the Germans sacked Louvain and shelled Reims our politicians and press discovered suddenly that art is a sacred thing and that people who disrespect it are brutes. Agreed: and how have the monied class in England respected art? What sacrifices, material, moral, or military, have they made? Here, in the richest country in the world, with what difficulty do we raise a few thousand pounds to buy a masterpiece. What institution do we starve so abjectly as we starve the National Gallery? Has anyone met a rich man who denied himself a motor-car to keep a genius? How dare the people who fill our streets and public places with monuments that make us the laughingstock of Europe, the people who cannot spare a few guineas to save a picture, who cheerfully improve away respectable architecture, who allow artists to perish and put up the Admiralty arch,—how dare such people pose as the champions of culture and expose their wounded feelings in the penny and half-penny papers. In times of peace they used art as a hobby and a means of self-advertisement, in war-time they would brandish it as a stick against their foes. The old abuse was vulgar, the new one is worse.

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We can measure the sensibility of these politic amateurs when we overhear their chatter about patriotic art and catch them, as we caught them lately, attempting to ban German music. "Give us patriotic art," they cry. As if art could be patriotic or unpatriotic! One might as well cry for patriotic mathematics. The essence of art is that it provokes a peculiar emotion, called æsthetic, which, like religious emotion or the passion for truth, transcends nationality. Art's supreme importance lies precisely in this: its glory is to share with truth and religion the power of appealing to that part of us which is unconditioned by time or place or public or personal interests. A work of art satisfies us æsthetically, just as a true proposition satisfies us intellectually, whether it was made in Germany or elsewhere: by whom it was created, when it was created and where it was created are matters of no consequence to anyone but an archæologist.

There is no such thing as patriotic art. The qualities in a poem, a picture, or a symphony that lead people to describe the work as patriotic are purely adventitious and have nothing to do with its æsthetic significance. Wordsworth's so-called patriotic sonnets, in so far as they are works of art—and what superb works of art they are!—are as appreciable in Berlin as in London. They appeal as directly to the æsthetic sensibility of any German who can read English and appreciate poetry as to the sensibility of an Englishman; and unless a man be æsthetically sensitive he will never really appreciate them no matter where he was born. The state of mind which art provokes and which comprehends and reacts to art is one in which nationality has ceased to exist. I am not saying that an ardent patriot cannot appreciate art; I say that when he appreciates it he is carried into a world in which patriotism becomes meaningless. If he has not been carried into that world he has not appreciated art. I shall not deny that at the present moment an Englishman may find something peculiarly sympathetic in the ideas and memories associated with the poetry of Wordsworth. It is conceivable

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that a Frenchman may find unpalatable certain memories and ideas associated with the music, or more probably with the name, of Bach. But these memories and ideas are not a part of the music; they are only the contribution of an unæsthetic auditor. The man who says that he can no longer appreciate the music of Bach merely admits that he has never appreciated the music of anyone.

Two things above all others give value to a civilization, art and thought. It were well that those even who cannot appreciate Beauty and Truth should bear this in mind. Instead of blustering about this being no time for art they should rejoice that there are some who, rising above tumultuous circumstance, continue to create and speculate. So long as a sense of art and the disinterested passion for truth persist, the world retains some right to respectful consideration; once these disappear its fate becomes a matter of indifference. The continued existence of a stupid and insensitive world, incapable of æsthetic rapture or metaphysical ecstasy, is not particularly desirable. It may be wise to wage war for the sake of civilization; that is a question of probabilities with which I am not at present concerned; but a war that leaves the world poorer in art or thought is, whatever its political consequences, a victory for barbarism and for humanity a disaster. A nation that would defend the cause of civilization must remain civilized; and that a nation may emerge civilized from fierce and exhausting war, that it may preserve unabated its power for good, it is necessary that during its horrid and circumscribing labours there should have been men who, detached and undismayed, continued to serve interests higher and wider than the interests of any state or confederacy. In times of storm and darkness it is the part of artists and philosophers to tend the lamp. This duty they perform unconsciously by simply minding their own business.

Artists and philosophers and those who are apt to handle truth and beauty are, in fact, the vestals of civility. To be sure they are not appointed or elected, neither are they consecrate nor shorn nor always chaste; nevertheless, they

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tend the lamp. Because they alone can project their thoughts and feelings far beyond the frontiers of states and empires, because their sympathies and interests are universal, because they can lose themselves in timeless abstractions, because their kingdom is not of this world, they alone in times of division and calamity and short-sighted passion can keep the flame alive. Thus do they unintentionally serve the state. So far as they are concerned their beneficence is quite adventitious, their service supererogatory. For they do not live to serve humanity but to serve their masterful and inhuman passion; by serving that faithfully they save the world. Let them continue to think and feel, watching, untroubled, the cloudless heavens, till men, looking up from their beastly labours, again catch sight of the unchanging stars.

Mens equa in arduis: calm and unconcerned in the hurricane: the mind set steadily on indestructible things: that, I think, is how it should be in these days with artists and philosophers. When the Roman soldiers entered Syracuse they found Archimedes absorbed in a mathematical problem. He never raised his head and they killed him where he sat.

I want to save those nice, cultivated people who go about saying that this is no time for art from doing some harm and making themselves ridiculous. To them, not to the artists, is my mission. They are in danger of becoming coarse and absurd and of saying things that their enemies will never allow them to forget. They are not formidable: besides, art is fearless. For art cannot die; neither can the desire for art. If history teaches nothing else worth remembering it teaches that. Artists will create though they must starve for it and art we will have though our days be numbered. Artists and those who care for art may be a mere handful in the human mass, but theirs is the passionate faith that conquers somehow in spite of battles and holds the world in fee.

Art survives: the state of this chilly quarrelsome little planet has never grown so desperate that artists have lost

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faith. After all, why should they? Art is not less important because some men are bad and most are wretched; and it is no part of an artist's business to straighten out the contortions of humanity. "The loss of hue to river-banks," observed Ch'êng Hao, the Sung poet, "is the river-banks' affair." Art has seen worse days than these. Between 937 and 1059, if we may believe Glaber, there were forty-eight years of pestilence and famine. From Constantinople to Exeter the world was one miserable sore. Cannibalism became chronic. In the market-place of Tournus human joints were exposed for sale. Man had sunk to such depths of impotence that the wolves came out and disputed with him the mastery of Europe. War seems to have been the only activity for which the leaders of the people were not too feeble: let us hope that they kept honour bright and preserved nicely the balance of Neustria, Austria, and the kingdom of Italy. And over all hung, as well it might, the terror of judgment and the end of the world. Yet art survived. The years that lie round about the millennium are precisely those in which artists seem to have been unable almost to do wrong. Then it was that the æsthetic sense, rising calm above confusion, detached and remote from human woes, expressed itself gravely in that early Romanesque architecture and sculpture which remains the imperishable glory of the middle age.

There have been wars as great as this; there may be greater. Empires and Continents have gone down and may again go down into misery. Art survives. What remains of Egypt but her monuments? In Babylonia there were kings and princes before the coming of the Assyrians; there were statesmen, generals, and priests: but the glory and story of that land would be for us a vague, bad dream were it not that the sculpture of the vanquished Sumerians remains splendid and unobscure. Kublai Khan, that conqueror of China and scourge of all the East, lives, if he live at all, in the verse of an English poet, while the art

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of the people he came to destroy is the great glory of Asia and the inspiration of half the world.

To be or not to be thinking about art is not a matter of choice. Art is imperious. As well tell an artist not to breathe as not to create. Artists will be artists: and so far as I can see the spirit has never foundered in the wreck of material things. If those ancient ministers of the devil, fire and sword, pestilence and famine, could not force men to stop creating and feeling, I do not suppose that journalists and politicians and inactive colonels and fire-eating curates will be more successful. There never was a time that was no time for art. In the darkness of the darkest ages the æsthetic sense shines clear. Were not the masterpieces of Attic comedy written in a beleagured state in the throes of a disastrous war? And was it not in 1667 that England suffered what has been called her greatest humiliation? Certainly it was in 1667 she received her greatest epic.

Few, indeed, can look steadily at their own times. To the ephemera that tossed on the waters of the past the ripples were mountainous; to us the past is a sad, grey lake, scarcely ruffled, from which emerge the tall lights of art and thought. It must be a defective sense of proportion, I think, that makes people who cite Aristophanes but never heard of Conon, who are deep in *Paradise Lost* but neither know nor care who won the battle of Lowestoft, assert so confidently that this is no time for art. Let them, for their own sakes, consider what sort of figure in history one would cut who had adjured young Shakespeare —thirty years of age and, if one may draw inferences from tradition, able at least to shoot—to give over his precious fooling and join the expeditionary force in Portugal. Yet the moment was grave: we had lost *The Revenge* and failed ignominiously before Cadiz: we still expected invasion. Shakespeare and the rest of them might surely have done something for their country.

CLIVE BELL.

LONDON, ENGLAND.

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INTERNATIONAL MORALITY.

L. S. WOOLF.

SIDGWICK has an almost unique power and method of analysis. He draws distinctions with painstaking pertinacity in such a way as to obliterate finally all outlines. One lays down a book like the *Elements of Politics* with the pleasant feeling that probably there are no such things as ideas, or that if there are they almost certainly mean nothing. International law and international morality he assumes to exist, and then very gently he begins to distinguish them from law and morality and from one another, until, with a final full stop, he unintentionally leaves one convinced that international law and morality do not exist. The ordinary man, if he ever opened Sidgwick or could read him when opened, would at the present time conclude that in this he had found a philosophical corroboration of his own belief. We are all telling one another that international law and morality do not exist, and, if the newspapers ever quoted Hobbes, we should be told again and again in those forceful words of the Leviathan that in the relations of independent states "right and wrong, justice and injustice have no place."

Sidgwick himself, it should be noted, says flatly that experience proves Hobbes to have been wrong: "there *are* accepted rules of international duty, and the pursuit of national self-interest *is* restrained by them." It would be comforting in these times to be able to agree with him, and it may therefore be of value to make a brief inventory of the facts and of our own beliefs upon the subject, to see what connection with and influence upon the relations of states and foreign policy the ideas of right and wrong have had in the past. And in doing this I propose as far as possible to neglect the well-worn questions of international law, or rather to embrace and lose them in the wider

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question—what actual effect have ideas of right and wrong had upon the handling of international affairs and why has the effect been so small? Morality, in the sense in which I am using it, is essentially what the ordinary man means by morality. The ordinary man would say: "It is right to tell the truth even though it harms you," or "It is wrong to cheat even though it benefits you"; and there can be no question that in the relations of ordinary men with one another these general rules frequently cause them to tell the truth or to keep their hands out of the pockets of their neighbors. It is morality of this kind with which I am concerned, a belief in the rightness or wrongness of certain actions which actually influences persons to do or avoid those actions.

The frequent use of two words "right" and "wrong" points to a broad distinction in morality. It has in fact two sides, one positive, the other negative. In practice there is all the difference in the world between telling the truth and not telling a lie, between doing something which you don't want to do or which is against your interests because it is right, and not doing something which you want to do or which is in your interests because it is wrong. The morality of Jesus Christ was essentially of the active or positive kind; his doctrine with its "turn to him the other also," and its "Love your enemies, bless them that curse you, do good to them that hate you" led almost logically to the British private morality taught in the nineteenth century that the goodness of an action varied in an inverse ratio with its pleasantness. Samuel Smiles and Miss Edgeworth's Moral Tales, inspired by the Sermon on the Mount, have no use for the child who merely "eschews evil," and the good man is represented as searching the world with a lantern for good (and unpleasant) things to do.

Is there any positive international morality in this sense? Has the view ever been seriously held or acted upon that a nation should do good for the sake of doing good, should risk the loss not of the whole but of even a square yard of the world in order to save its soul? Asked

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these questions off hand, most people would be inclined to answer with a decided negative and to maintain that rules of international morality, even when admitted, have been negative, merely imposing limits upon the right to pursue national self-interest. It would be difficult to find in history a case of a nation or statesman acting or professing to act in the spirit of the Sermon on the Mount or even of Maria Edgeworth, and almost as difficult to find a case in which any large body of public opinion urged a statesman so to act. And yet a more curious search into the past does reveal the fact that more modified forms of altruism have influenced foreign policy and have been professed as rules of international action.

The Thucydidean Pericles claimed that Athens was the school of Hellas, because "we alone do good to our neighbors not upon a calculation of interest, but in the confidence of freedom and in a frank and fearless spirit."[1] Unfortunately facts hardly uphold the claim. The words were spoken just when war broke out, a time of emotional stress at which nations are peculiarly liable to believe in the nobility of their own motives. When fifteen years of war had—if one may use the expression—taken the gilt off the national gingerbread, the Athenian ambassador to Melos gave a far more faithful picture of his country's view of international morality: "You and we should say what we really think, and aim only at what is possible, for we both alike know that into the discussion of human affairs the question of justice only enters where the pressure of necessity is equal, and that the powerful exact what they can, and the weak grant what they must."[2]

We have indeed to go to much more modern times to find a case in which a nation can with some reason claim to have acted from really altruistic motives. Perhaps the most curious of all such cases was the first, namely the action of Britain with regard to the slave trade in 1815. It would of course be absurd to say that no motives of

[1] Thucydides II, 40.
[2] Thucydides V, 89.

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self-interest entered into the anti-slavery agitation. It did, but none the less the international action of Great Britain was most certainly caused by a remarkable popular wave of positive morality. Large numbers of persons thought that slavery was morally wrong and they insisted that their ministers should devote their whole efforts to abolish it at the congress which had really met to reconstruct Europe. "The nation is bent upon the object," Castlereagh wrote in his instructions to Sir H. Wellesley in August 1814. "I believe there is hardly a village that has not met and petitioned upon it; both Houses of Parliament are pledged to press it, and the Ministers must make it the basis of their policy." This case ought to make everyone careful of dogmatizing about national psychology, foreign policy, and international morality. Here was a nation which had just successfully finished an exhausting war of many years' duration, apparently fought on behalf of its own and the world's inde ndence, compelling its ministers at the final settlement ot to protect or advance its own interests, taking no not e of the questions of Poland, Germany, Italy, France, but nsisting that freedom should be given to some thousands of African negroes in French and Spanish colonies. To realize fully this curious phenomenon one must remember that to-day it would only be paralleled if when Sir Edward Gray goes to the European conference a wave of popular moral enthusiasm should compel him to make the basis of his policy not the restoration of Alsace Loraine, not the restoration of Poland, not the destruction of German militarism or the crushing of Germany, but the abolition of the drink traffic in Africa. And the parallel would only be really complete in its altruism if the country and the ministers were willing to restore Togoland to Germany as "compensation"[3] for her agreement to abolish the drink traffic.

No nation has ever again reached quite so quixotic a height in its foreign policy as Britain attempted to reach in

[3] At one time it was seriously proposed to cede Trinidad to France as compensation for abolishing slavery.

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1815. But in 1876 a somewhat similar instance occurred again in the British nation. The Bulgarian case was similar in that a gust of popular feeling, distinctly moral, had for a time a considerable effect upon the international relations and foreign policy of the country. It differed, however, in one important and interesting particular, namely, that the feeling in the country was directly and deliberately roused by a politican and a statesman, who however, one must add, was out of office. Mr. Gladstone in his famous pamphlet, The Bulgarian Horrors and the Question of the East, and in his astonishing campaign and speeches of 1876 and 1877 attempted to persuade the nation to subordinate what it considered its interests to principles of morality, and very nearly succeeded. No more extreme case could be imagined, because it was and remained an axiom of British policy that British interests made it imperative to bolster up Turkey and to keep Russia's hands off her at all costs. And Gladstone, despite his unfortunate habit of ambiguity, did not upon this occasion yield to it: he went the whole moral hog. Looking "like an inspired man," he told the House of Commons that: "there were other days when England was the hope of freedom. Wherever in the world a high aspiration was entertained, or a noble blow was struck, it was to England that the eyes of the oppressed were always turned. You talk to me of the established tradition and policy in regard to Turkey. I appeal to an established tradition older, wider, nobler far—a tradition not which disregards British interests, but which teaches you to seek the promotion of these interests in obeying the dictates of honor and justice." For a time Gladstone swept the country off its feet into the paths of peace and righteousness, and though Disraeli had in November 1876 been quite ready for a "righteous" war on behalf of Turkey, by April 1877, when Russia declared war, there was no chance of England doing anything but remain neutral. It must, however, be added that it was not for long that "the established tradition and policy in regard to Turkey" were exchanged for a policy of "honor and justice." It can

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hardly be said that anything except a mistaken view of British interests guided British diplomatists in 1878 at the Congress of Berlin.

These are I believe the only two cases in which positive international morality has actually dictated national action. There are of course innumerable cases in which statesmen and nations have claimed, and rightly claimed, to act from moral motives, but in all these cases it will be found that admittedly the dictates of national interests coincided with the dictates of international morality. The peculiarity of the anti-slavery and Bulgarian agitations was that the appeal to self interest was neglected and a certain course of action demanded solely because it was believed to be right. But though no other particular instances of pure international altruism can be quoted, there is in existence a document in which a British Minister, at the command of his sovereign, attempted to lay down for practical purposes the principles upon which the cabinet should allow morality to dictate policy. Queen Victoria had been so upset by Palmerston's principles and methods that when in 1851 she obtained his abrupt disappearance from the Foreign Office she took the disconcerting course of asking his successor, Lord Granville, to lay down "the general principles for the conduct of our foreign policy." Lord Granville's memorandum[4] was a most interesting document. He begins with the statement that the duty and interest of a country like Britain are "to encourage progress among other nations." But in this task she must use "justice, moderation, and self-respect," and must not seek to encourage progress by "any undue attempt to enforce her own ideas by hostile threats." "One of the first duties of a British Government" is "the encouragement of British foreign trade," but "in aiming at this all considerations of a higher character were not to be pushed aside." "Non-intervention in the internal affairs of other countries" was a principle tending "to strengthen the lasting influence

[4] The quotations which follow are taken from the summary of the draft of this memorandum given in Lord Edmond Fitzmaurice's *Life* of Lord Granville.

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of the nation upon the opinion of the world"; as to whether intervention should take place, "no general rule, however, could be uniformly applied." The government should support "the establishment of liberal institutions and the reductions of tariffs" in foreign countries, but they should "press these views only when fitting opportunities occurred."

Comment upon this document is unnecessary. Let us return to the subject of positive international morality. A statesman arguing that policy should be based upon such morality would say in effect: "We ought to do this because it is right, even though it does conflict with our interests." Such an attitude is, as we have seen, extremely rare. The ordinary attitude of statesmen and foreign policy is: "We ought to do this because it is both morally right and materially to our interests." This was habitually the argument of that typically British statesman, Palmerston. Again and again in his speeches he shows a deep and honest conviction that by a law of nature the dictates of British interests and of morality invariably coincide. He was so convinced of this that sometimes he appeared to be purely a materialist and sometimes purely an idealist. This happened because he sometimes argued to himself: "This is right because it is to British interest," and at other times: "This is to British interest because it is right." That this is the true view of Palmerston can be seen from the light in which his career appears to M. Hanotaux—it is from foreign writers that one always gets the truest conception of our own political history. To M. Hanotaux, Palmerston is a typical idealist, a man moved by a moral passion for liberty. "Partout où la cause libérale se lève, Palmerston accourt et se déclare son champion. Il chargerait plutôt les moulins à vent.... Il chante: 'Mort aux tyrans!' En Italie, en Espagne, en Portugal, en France, en Allemagne, sur les continents et sur les mers, il est de toutes les parties révolutionnaires. On dit: 'Il soigne ainsi les intérêts anglais.' Oui, mais aussi il suit sa pente: il est fils de la Révolu-

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tion.... (Chez lui) l'intérêt national avait lié partie avec l'*idée*."[5]

There is in fact no doubt that the Palmerstonian policy really allowed morality to govern international relationships to a greater extent than that of most ministers. The *motive* of his actions was the fostering of liberty rather than of British interests. If he had been good at introspection and truthfully confessed his attitude, he would usually have had to express it thus: "I think we ought to do this because it is right, and"—as an afterthought—"because it is also to the country's interest." In practice this way of looking at things is substantially different from that of most statesmen, whose real process of thought almost invariably appears to be: "I think we ought to do this because it is to the country's interest, and"—as an afterthought—"because it is right."

There is only one other point about positive morality in international relationships which deserves attention. It is a curious fact that practically every case in which altruistic action has been professed by or recommended to a nation has been a case in which the "liberty" of some human beings was in question. Thus both the anti-slavery and the Bulgarian agitations were questions of liberty; and the whole Palmerstonian policy was directed against tyranny. There is indeed some ground for believing that the positive international moral sense has at present only developed with regard to freedom. There are many people, especially in this country, who would say that it is the duty of a state, regardless of its own interests, to protect the freedom of another state, especially if the inhabitants of the latter are of kindred race to themselves. But it is difficult if not impossible to think of any similar international duty which would be recognized by an equally large or even smaller body of people. There was, of course, before the nineteenth century, a large number of people—probably a certain number still exist—who believed that it was the duty of a state to spread the religion professed by its na-

[5] Gabriel Hanotaux, *La Politique de l'Equilibre, 1907–1911*.

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tionals even to the extent of exterminating the nationals of other states who refused to profess it. But although this might strictly be regarded as an instance of a once widely recognized international duty, in practice it was always a religious rather than an international duty.

It now remains to consider negative international morality. A statesman arguing that policy should be based on such morality would say in effect: "We ought not to do this, even though it is in our interests, because it is wrong." Now there is no doubt that many negative international duties of this kind are at least in theory and profession widely recognized and acknowledged. International law, in so far as it is customary international morality crystallized, is largely concerned with them. Its rules lay down the limits within which a nation may ruthlessly pursue its own interests. But international law covers only a very narrow field; and international morality even of the negative sort is best studied in the wider field of foreign policy.

The motives governing national actions and policy should themselves be studied in the utterances of statesmen responsible for these actions and policy. Such a study reveals at once a curious paradox. In the first place it is beyond dispute that the actual standard of international morality as revealed in the actions of one state towards other states is very low when compared with the standard of individual morality in civilized or even uncivilized countries. It is in fact so low that the plain man is often tempted to conclude that in practice no standard exists at all and that in the relations of independent states right and wrong really do have no place. And yet the persons primarily responsible for those actions hardly ever admit this, and in their public utterances they almost always assume that the standard of international is very much the same as that of individual morality. Their arguments can usually be reduced to one of the three following forms: (1) We ought to do this because it is to our interest and it is morally right, (2) We ought to do this because it is to our interest and not morally wrong, (3) We ought not to do this because it is morally wrong.

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The exceptional cases in which statesmen admit immoral or non-moral policy only serve to emphasize the truth of what I have said above. Bismarck alone among modern statesmen habitually denied the existence of international morality. "Every government," he said, "takes solely its own interest as the standard of its actions, however it may drape them with deductions of justice or sentiment." But it is noticeable that even Bismarck waited until he had retired from active participation in international politics before he allowed the world to know his real opinion upon the subject. Even he, so long as he was chancellor, draped his actions with deductions of right and wrong. But the clearest proof that statesmen feel that they can never afford publicly to deny the existence of international morality or to override its precepts is be to found in the defense by the present Imperial Chancellor of the invasion of Belgium. The argument which that defense implied was really this: "I admit that it is morally wrong to invade Belgium and a nation is not justified in doing what is morally wrong for its own interests; but it *is* justified when the case is one of necessity, one of life and death." In other words the Imperial Chancellor accepted the ordinary standard of individual morality as applicable to international relations, the standard which commonly says for instance: "It is wrong to tell lies, but of course in a matter of life and death one is justified in telling a lie."

I suggest that there are two reasons why the paradox which I have pointed out exists and why although a standard of international morality is always assumed and admitted it has so very little effect upon international relations. In the first place the actions of states to one another are hardly ever really influenced by public opinion. This is due partly to the traditional secrecy of Foreign Offices, but also partly to the fact that nearly everyone possesses a profound lack of interest in and sense of responsibility for his country's actions. If anyone thinks this an exaggerated statement, he should read Chapters IV and V in Mr. Baty's *International Law*. Mr. Baty has collected a large number of cases in which for one reason or another powerful

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states have "been led to" interfere with their smaller, and often uncivilized, brethren. It is impossible to read these instances without amazement at the cynical lack of morality in international actions. But it can hardly be an exaggeration to say that not one person in a million, outside the ranks of international lawyers and civil servants, has any knowledge of how his country acted in these cases. How many Englishmen could tell you how the territory of Ja Ja became "incorporated in the British dominions," or how the German and British Foreign Offices dealt with Samoa? And what is true in these admittedly obscure cases, is hardly less true on the broader and more important stage of foreign policy. For the greater part of his life the ordinary man no more troubles himself with how his country is acting toward Germany than with how it is acting towards Ja Ja.

Standards of morality depend to an enormous extent upon public opinion. Thus it is certain that every man's thoughts are far more immoral than his acts. The reason is that his thoughts are far less influenced than his acts by public opinion. And that brings us to the second cause of our paradox. Since public opinion and the ordinary standards of morality do not habitually influence international actions, the character of those actions will largely depend upon the traditions and standards of that small class actually responsible for them. Now the traditions and moral standards of diplomacy are notoriously low. The publication of a dead diplomatist's severely expurgated memoirs is almost always remarkable for the divulging of some new and scandalous scandal. Behind the scenes one sees that, to alter slightly Hobbes' sentence, "in the relations of diplomatists right and wrong, justice and injustice have no place." The standards of business morality are not usually considered high, but even a business man of repute would hesitate in important negotiations to tell a deliberate lie to another business man about a vital point, especially if he knew that two days later he would have to admit that it was a deliberate lie. But Baron von Aehrenthal on October 3, 1908, showed that a similar action by

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the foreign minister of a great power towards the ambassador of another great power is in diplomatic circles still possible.[6]

It is not therefore surprising that in practice international morality so rarely determines foreign policy. What does determine it is diplomatic morality. The result is that the motive of a state's action is frequently not even its own interests but the interests of particular persons. That is after all what is meant by the statement that the actions of European powers in the undeveloped quarters of the globe are so often influenced "by financial and commercial interests." And again the same is true in the wider field of foreign policy. Mr. Brailsford has already drawn attention to the curious case of Count Waldersee. The question of whether Germany should or should not provoke a war with France in 1889 was complicated by the desire of this commander-in-chief, "who was growing old," to lead his army in the field before his final retirement. "In the end it was found impossible to provide Count Waldersee with a European war, but to the astonishment of mankind, the Kaiser did, before he reached the age limit, arrange a punitive expedition to China for his benefit."

L. S. WOOLF.

RICHMOND, ENGLAND.

[6] On October 3 the British Ambassador, at Vienna, Sir W. E. Goschen, asked Baron von Aehrenthal officially whether he "had any knowledge of an impending proclamation of Bulgarian independence." Apparently Aehrenthal had not expected any inquiry about Bulgaria, at any rate he replied that "he had no knowledge of an impending proclamation of Bulgarian independence, that he did not consider it to be imminent, and added that there was no mention of it in Austro-Hungarian reports from Sofia." Meanwhile on the same day the Austro-Hungarian Ambassador at Paris was, two days before his instructions, delivering to the French President the Emperor Francis Joseph's letter announcing the impending annexation of Bosnia-Herzegovina. The President asked the Ambassador the same question as Sir W. E. Goschen was asking Aehrenthal, the Ambassador's reply was "C'est tout arrangé, Monsieur. La Bulgarie nous dévancera d'un jour." The French Government communicated this piece of information to the British Government, thus Sir W. E. Goschen was able to "tax Baron von Aehrenthal with untruthfulness in the presence of several diplomatic witnesses." See *The Hapsburg Monarchy* by H. W. Steed, from which the above quotations are taken.

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THE WAR AND NON-RESISTANCE.

A Rejoinder to Professor Perry.

THE HONORABLE BERTRAND RUSSELL, F.R.S.

PROFESSOR PERRY'S article in the April number of the International Journal of Ethics calls for a reply both by its temperateness, and by the fact that it expresses objections to my previous article which are likely to be felt by most readers. In part, his objections would have been removed if I had written more fully. On the subject of non-resistance, I have since expanded what I had to say and have, I think, incidentally met some of his charges.[1] But in what follows I wish to reply point by point to his criticisms.

Professor Perry is surprised that I should speak of my own opinions as merely an expression of "feeling." It is true that I formulated judgments and supported them by what was meant to be as like reason as I could make it. But all that can be *proved* in this way is that the opinion one is combating is by no means certainly true, and that the opinion one is advocating has as much in its favor as that of one's opponents. If our views as to what ought to be done were to be truly rational, we ought to have a rational way of ascertaining what things are such as ought to exist on their own account, and by what means such things are to be brought into existence. On the first point, no argument is possible. There can be nothing beyond an appeal to individual tastes. If, for example, one man thinks vindictive punishment desirable in itself, apart from any reformatory or deterrent effects, while another man thinks it undesirable in itself, it is impossible to bring any arguments in support of either side. In regard to means, the difficulty is just

[1] *Atlantic Monthly*, August, 1915.

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the opposite: so many arguments can be brought on both sides of the question that no rational decision is possible. Take again the question of punishment. Is punishment reformatory? Obviously sometimes it is, and sometimes it is not. Will it be reformatory on the present occasion? The answer, however supported by a wealth of argument, will turn on whether we feel a vindictive impulse or not. Those who feel such an impulse will persuade themselves that the punishment will be wholesome; those who do not will persuade themselves that it will only produce exasperation.

The subjectivity of men's opinions on political questions is much greater than is generally supposed. Whether a certain course of action will have a certain effect cannot, as a rule, be ascertained, and yet all argument for or against depends upon the effect which is expected. Unavowed and often unconscious desires lead men to feel convinced that a certain effect will result, when they ought to be full of doubt. Many men, before the war, had an unconscious impulse toward war, which led them to advocate, in the name of peace, various measures which seemed, to genuine lovers of peace, ideally calculated to produce war. The few who frankly avowed a desire for war, like Bernhardi, maintained that war leads to moral regeneration. The *Morning Post* maintains this view still, although it is easy to see that war has provoked hatred, brutality, and vice. It is not hypocrisy that promotes positive opinions of this kind, it is merely failure to allow for the influence of passion on thought. In the case of private quarrels, we all know how anger alters men's judgment. And on the other hand pacifism before the war made many of its advocates blind to facts which took them by surprise last August, and led them sometimes to repudiate the convictions of a lifetime. It was the attempt to do justice to such sceptical considerations which led me to speak of my own views as an expression of feeling.

Professor Perry very kindly praises my disinterestedness. But I am willing to admit that disinterestedness itself may

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become a passion. When a German is accused of having murdered a baby, and it turns out that he murdered a boy of twelve, I almost forget his crime in the desire to prevent injustice. I am conscious that if I belonged to a neutral nation I should reprobate the spirit of Germany wholeheartedly; but I am restrained by disgust at the orgy of self-righteousness that has swept over the British nation.

This applies especially to treaty-breaking. I recognize at once that treaty-breaking is a crime, since a habit of observing treaties would further the reign of law between nations if it could be established. But all nations sin in this respect. England and France ignored the Act of Algeciras; England and Russia ignored their guarantee of the independence and integrity of Persia; the Tsar broke his coronation oath to respect the liberties of Finland. America was only saved by the personal influence of the President from a breach of treaty as regards the Panama Canal. The nations of Europe have not the right to profess horror when one of their number follows the usual practice—not because the practice is good, but because there is hypocrisy in their horror.

The chief crime of Germany in invading Belgium lies less in the legal fact that a treaty was broken than in the fact that terrible cruelty was inflicted on an unoffending nation.[2] But the question which England had to consider was, not whether Germany had committed a crime, but whether we should do anything to mitigate the bad consequences of that crime by going to war. If we had not come in, the Belgians would in all likelihood not have resisted the German arms. In return for a free passage and for our neutrality, the Germans would have respected Belgian independence, and Belgium would have been spared almost all that it has suffered.

Professor Perry says: "It is important that no breach of such conventions as are already in existence should be con-

[2] If, for example, Belgium had first violated its own neutrality (as the Germans pretend), that would not make Belgium as guilty as Germany, because the crime would be only against law, not against humanity.

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doned" (p. 308). If so, the duty cannot be confined to England, it must apply equally to the United States. Does Professor Perry really hold that the United States ought to have gone to war for Finland or Persia or Morocco? Surely not. The evil of a great war is so stupendous that in itself it outweighs almost any good result that it may achieve. Let us try to induce our own nation to observe treaties, but let us not embark upon a universal crusade against other nations which fail to observe them.

Professor Perry expects (p. 309) that wars will be brought to an end through respect for treaties and international law. I do not myself think that this is likely to be a sufficiently strong force. I think wars will end, if they do end, through a growing realization that they are cruel and irrational, that the supposed conflicts between the interests of nations are illusory, and that co-operation is more likely to promote the happiness of the average citizen than mutual slaughter. The present war is likely to do a great deal to promote this realization, since the losses are unprecedented, and the gains to all parties are likely to be infinitesimal. A mood of unreason swept Europe into the conflict; but the penalty for unreason has proved so great that men are likely to respect reason for some time after the war ends.

I agree with Professor Perry that it is legitimate to make war in order to end war. But there is no reason to think that this war has any such purpose. As the *Morning Post* said (leading article, October 20, 1914): "The absurd talk about this being a war against militarism has now subsided. . . . After all the British Empire is built up on good fighting by its army and its navy; the spirit of war is native to the British race." This is the honest truth. All honor to the *Morning Post* for having the courage to proclaim it.

Professor Perry, in his argument against non-resistance, ignores the limitations which I had suggested to the doctrine. A war of principle, I had admitted, is sometimes justified. If some principle is at stake which we honestly believe to be of great importance to the human race, and

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if there is reason to think that that principle will survive by our victory but not otherwise, I hold that war may be justified. But in the present war, all the alleged principles seem to me in the nature of pretexts. As *The Times* has repeatedly pointed out, this is a war for the Balance of Power. It follows the tradition of the wars between Francis I and Charles V, between Louis XIV and Marlborough, between revolutionary France and legitimist Europe. These wars, in retrospect, have none of that glamour and importance that people endeavour to attach to the present war. And the present war, in retrospect, will shrink as they have shrunk.

The doctrine of non-resistance, as I hold it, is only applicable to wars between civilized states. It rests upon the belief that what is valuable in a European nation is more likely to be destroyed by war—even successful war—than by anything that another nation is likely to do if it is not resisted. A nation sufficiently numerous and strong to resist successfully by force of arms will also be able, if it chooses, to resist by the method of the strike, by mere refusal to obey. No one seriously supposes that the Germans would undertake to govern England, even if we had no army or navy. The mere political difficulties would be insuperable. And if ordinary peaceful citizens in Germany could not be incited by fear of England, there would be no such public opinion in Germany as would sanction an invasion of England.

As regards Luxembourg, I have no reason to doubt that its condition is deplorable. But surely it is impossible to compare its sufferings with the devastation, murder, and rapine that have been inflicted on Belgium. And if the Allies succeed in reconquering Belgium, Belgium will suffer in the process all the destruction that may possibly be in store for Luxembourg.

I have answered elsewhere most of Professor Perry's arguments on the subject of non-resistance. But I should like to say that non-resistance, as I conceive it, involves no lack of spirit or pride; on the contrary, it involves a

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greater and firmer pride than any other policy, and as great a readiness to die rather than yield as can be shown on a battlefield. The case of the Jews, alleged by Professor Perry, is ruled out by the very fact that they are, as he says, "obsequious." But the chief difference lies in the fact that the Jews are not a geographically compact nation, being almost everywhere a minority. They could not, in fact, secure their ends by armed resistance. Much the same conditions—large population, public spirit, power of organization—are required for preserving liberty by passive non-obedience as are required for success in an armed conflict.

With what Professor Perry says in conclusion as to the relative merits of the combatants, I am largely in agreement. I think a victory for the Allies is much more desirable than a victory for Germany. I agree that "Germany and Austria are the principal offenders," but it is not clear to me that on them "may justly be visited whatever penalty be appropriate to the crime of war." American sympathizers with the cause of the Allies, under the impression that they are showing friendship, are very willing to urge us to go on pouring out our best blood on the plains of Belgium. But, though none of the combatants remember it, there is at stake in this war something which all equally are endangering—the civilization of Europe, as it has come down to us from the Renaissance. If the war lasts much longer, almost all the men in Europe between 20 and 40 will be dead or disabled; the ones who return from the war will, especially if they are sensitive and highly civilized, have lost energy and initiative, and will drift through life helpless and listless. The next generation will be educated by those who are no longer vigorous, and the continuity upon which civilization depends will be broken. It is likely that pestilences will carry off a large proportion of the civil population. It is certain that poverty and popular discontent will interfere with the work of art and science and literature, and threaten to submerge the higher mental life that has made

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Europe important to mankind. Horrors will have grown familiar, and will have ceased to horrify. A large proportion of those who return from the war will become criminal or drunken. All this must be obvious to any one who has observed the men returning from the front, and who has reflected upon the economic condition of Europe after the war. For these reasons, the cost of punishment may well be greater than any good that punishment can do. And is it likely that punishment will weaken the hold of the military party in Germany? Is it not clear that their hold on the ordinary citizen depends upon fear, upon the feeling that the constant invasions which Germany suffered down to 1813 can only be prevented by a strong army? Will not the Germans argue, if they are invaded, that their army has not been strong enough, and that they have not paid enough respect to their militarists? M. Chéradame, a noted and patriotic French writer, points the moral which the Germans would probably point, when he says:

"La si dure leçon de 1870 aurait du vous préserver pour bien longtemps de l'antimilitarisme, des théories pacifistes et des illusions dangereuses sur la fraternité des nations. Au point de vue de l'influence des enseignements de l'histoire sur la vie publique, la supériorité des Allemands sur nous n'est pas contestable. Pendant soixante-quatre ans, ils ont préparé la revanche d'Jéna et leur victoire de Sedan ne les a ni grisés, ni endormis." [3]

I fear that Professor Perry's advice, if it is followed by the Allies, will only cause a new Jena to be the prelude to a new Sedan, and so on in an endless chain of victory and defeat to the end of time. Unless we are to believe in vindictive punishment for its own sake, even the worst wrong-doers ought not to be punished unless the punishment is likely to have good effects. In this case, it is likely, on the contrary, to perpetuate and extend the very evils for which it is sought to inflict punishment. In spite of the *Morning Post*, I believe the least aggressive of Eu-

[3] La Crise Française (1912), p. 208.

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ropean powers is England, which has only suffered defeat once, in the American war of independence. The United States, which has never been defeated, is even less aggressive than England. It is not defeat and punishment that makes nations peaceful, but security. We all know this as regards our own nation, but we are too contemptuous of other nations to judge them by ourselves. In this we are wrong, and the hope of the world must lie in a peace in which there are no victors and no vanquished.

BERTRAND RUSSELL.

CAMBRIDGE, ENGLAND.

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RIGHTS OF CRIMINALS.

SAMUEL GEORGE SMITH.[1]

IT IS only in recent years that the criminal has been an object of particular study. The laws deal with crime, and the penal codes confine themselves to defining what acts are crimes and what penalties shall be provided. During the last forty years there has been a consistent effort, largely in America, to shift the emphasis from the crime to the criminal. Workers in this field have insisted upon making the chief end of punishment the reformation of the man. The practical movement goes steadily forward, and I think with increasing wisdom and vigor.

A counter current has set in refusing to recognize crime as abhorrent because the criminal is held to be a fixed type, and his deed, therefore, to be practically automatic. There is no sentimentality about this view, although it sounds as if there were, and I shall show later that it is as lacking in pity as it seems to be lacking in any substantial basis of fact. Prison men agree that there are confirmed criminals, but they do not agree that repeated crimes prove any man to be under any compulsion to break the laws. The doctrine of the criminal type taught by Lombroso, and urged on by arm-chair theorists, in the name of what they call Eugenics, has no substantial following among practical workers. It is agreed that as a class criminals are neither so healthy, so intelligent, nor so moral as normal men. But there are more people out of prison than in of whom the same thing can be said. Let anyone visit the slums and make careful observation.

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[1] The author, who had served as president of the American Prison Association and as president of the National Conference of Charities and Corrections and had been a frequent contributor to the literature of social ethics, died March 25, 1915.

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Alphonse Bertillon invented the French system for the identification of criminals. A few measurements of different parts of the human body, a front and side view of the criminal, and a card index is the apparatus. He shows us that each human body differs from every other, and that physically the individual is unique. With his card index and his instruments of measurement it does not take more than ten minutes to identify a man. The English system of identification by thumb prints is based upon the difference in the fine lines upon the human hand. It is said that this method is really very ancient, and has been used among some of the inferior races who cannot sign their names but instead use the thumb print.

If men differ physically, still more is the uniqueness of personality exhibited in the action of the mind and the passions. Every tree in the forest becomes something different to every pair of human eyes, every fact has uncounted angles. Otherwise, we should have but one school of philosophy and no poets at all. We live in a multitudinous world, and upon the uniqueness of the individual, Professor Royce has based an interesting argument for immortality.

When a man has been called a criminal not much progress has been made. These men, having numbers and wearing the same kind of clothes, engaged in common labor under common rules of confinement, are men and, therefore, they are personalities. It is of little use to study the class called the criminal, except for the larger outlines and a working basis. Each man must be studied for himself. This is essential to any intelligible theory of penology.

This view is fundamental to the detail of prison management, to the working of the indeterminate sentence and the parole law, and to seeking reformation as the object of a penal system. At the same time, even within the prison, there must be a certain amount of organization that is on the whole crude and unscientific. The men are usually put into three grades according to their conduct,

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with varying privileges. The number of grades might possibly be increased, but that would increase the labor of prison officials, and perhaps would work no good result, for as we have seen according to theory there should be as many grades as there are individuals. That is impracticable. The same thing arises in the whole structure of normal society. It is very difficult to find unique treatment for the unique man. Even in the variety of occupations and the division of labor, which seems in the first view so complex, the individual must sometimes suffer in order that organized society may exist.

An account of the thing we call society, is a description of human relations. Every right has a corresponding duty, and any declaration of rights is an explanation more or less correct of the way in which men ought to act toward each other. The value of the individual is found in his capacity for successful combinations with his fellowmen. The strength of any social group depends upon the number of its ties. The solitary man has no significance, even if he has any real existence. Like Bertillon, we know our friends by certain measurements, but they are not stated in physical terms. A man lives in a house, belongs to a family, has a business, prefers certain amusements, has acquired certain habits, and so we recognize him. In your thought, pluck him loose from all these relationships and he has no more reality than a Greek ghost.

Robinson Crusoe had a new island when he found the man Friday. He began to organize industries and in some sense to lay the foundations of a state. It would have complicated matters very much if a third man had arrived. Robinson Crusoe might have been no longer king. To live together in large numbers men need to have more wisdom and a higher sense of justice than is generally supposed.

The rights of normal human beings are not permanent, but change as time goes on, while new duties arise. The baby has a right to be taken care of, the youth to help to care for himself that in manhood he may fill the obligation

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of helping in the care of someone else. One of the chief difficulties with men who have become rich is that while their fortune has changed there has been no corresponding change in their sense of obligation. They do not remember the bright dreams of youth, and what they then thought a man ought to do who had a million dollars.

The criminal has a special set of rights of his own because he has refused normal human relations. In ordinary society, rights and duties have some definiteness in statement and the obligations are sufficiently important to keep the world going. In the family, children and parents exhibit the primary relation of the world. The children have a right to the care of their fathers and mothers, but the parents have a right to the obedience and service of the children. In the state, the right of the ruler depends at last upon his capacity to serve the citizen, and if the citizen finds protection, he must pay for it by support of the government in peace and in war. In industry, in like manner, the worker and the superintendent have reciprocal relations. It goes further than the saying that "A day's work demands a day's wages." The superintendent must make the business so successful that the wages can be as large as possible, and the workman must see that without economic success there will soon be neither work nor wages, and he must regard the business as his own, which in fact it is.

The criminal has rejected the obligations of ordinary society. He has broken its rules, he has interfered at some point with the rights of his fellowmen. By so doing he has lost his primary relation to the state. He may not be wholly to blame. Society must often share with him the burden of his fault, and in fact, though he has become an anti-social man, society feels for him a special responsibility. The state, therefore, creates for him a special institution, called a reformatory or a prison, and introduces him to a new life. This new life is not simply confinement. That is only an incident represented in the walls. The state assumes new duties and creates new relations for the man

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in prison. The prisoner would not obey the laws of normal society, therefore he is introduced to an entirely new set of rules, and happy is he if he discovers at once that these rules are to be administered impartially, without passion, but that they must be obeyed. The penal institution furnishes its inmates a new set of rights and duties.

The primary right of a criminal is to be convicted of his offense. The failure of justice may be the complete undoing of a human life. When a man who is a criminal is set free by a court of law, it is doubtless a menace to society, but the main point is that it is the worst disaster that can happen to the man. He has rejected the social judgments declared by the state in its very highest vocation. He has shown himself unfitted for the free social life. If prisons are what they should be, the man who has deliberately broken the law can only find that quality of mercy that is not strained by legal condemnation and sentence. If the man really needs a treatment which the ordinary citizen does not, society is under obligations to give it to him, and in his sentence, society, too calm for wrath, has done her best.

The criminal has a right to be held responsible for his unlawful deed. Within recent years a new body of doctrine practically denies him this right. At this point I plead for the man. Before the last meeting of the American Medical Association, an address, as reported in the newspapers, declared that the time would come when no man would be held responsible for his conduct until he was proven to be sane. It is quite obvious that such a doctrine is a reversal of the history of human experience. Greek poets no less than Roman lawyers, and the founders of states equally with the founders of religion, have consistently held that the wrongdoer must be confronted with his deed. To-day the most usual excuse is, "I was drunk when I did it." To that excuse the reply is obvious, "You had no right to be drunk." Once relieve the guilty of responsibility and no guilt is left, but the flood-gates have been opened for an increasing carnival of crime, pouring

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out upon the world a new deluge of filth too appalling to be contemplated. The doctrine of human responsibility is the granite foundation of human society.

But I am pleading for the right of the criminal to be held responsible for his own sake. If he must have committed his unlawful deed, the idea of reforming him is an absurdity. Doubtless there are a few men who are morally insane. They are not nearly so numerous as is generally supposed. For the man who is morally insane there is little chance, and what is required in his case is permanent confinement. I am pleading for a nobler view of man, and for the criminal man. I am urging that he might have been better in his past, and that, therefore, he may become better in his future. He need not have committed his crime, and, therefore, notwithstanding his failure, he may find regeneration. We are in danger of losing the tender note of faith in human nature in the pursuit of a new psychology as false as it is stupid. Man, even criminal man, is an angel, though in dark disguise. It is the business of society to wash her hands clean and then to seek to rid the prisoner of his evils, performing the great miracle of revealing the angel-man. Yes, society must wash her hands and assume her share of the burden. We are not wise enough with our children in home or in school. We are not wise enough to make a sound social order. We are not wise enough to remove the pitfalls which human devils dig for their fellow-men. Society is responsible and the individual is responsible, but let us not give up the hope that society may be improved, and that the man may reach higher levels.

It is possible that a crime may be so accidental as to be what the French call a crime of "occasion," and it is possible that the shock of conviction is all that is required. In such a case the man should be put upon probation, under the guardianship of the state, for a sufficient time to find out his real character. Assuming that as a rule confinement properly follows conviction, it is only fair to consider what are the rights of the prisoner. There is the obvious physical side. He has a right to cleanliness, sanitation, proper

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food, plenty of light and fresh air, as well as medical supervision. Prisoners, as a rule, are young men, and there is something lacking about the prison if, as a rule, they do not leave the place in far better health than they entered it.

The prisoner has a right to discipline. The prison official sometimes thinks that discipline exists for the sake of the prison. But, of course, the rules are not to make it easier for the keepers but exist solely for the improvement of the prisoner. The prisoner has not only broken the law, he has usually broken himself. Often he has worked when he must, and slept when there was nothing else to do. He has not only committed an unlawful act, but he has been himself essentially a lawless person. He must form a new set of habits. He must find the value of a regular life, and that is the reason for dividing the twenty-four hours into definite periods and working by the clock in every detail, for in this way the routine becomes not only regular but rational, and discipline and toil illuminate the mind and strengthen and enthrone the will.

The egoistic primary passions, abnormal and unregulated, the hungers of the body, in one way or another accompany most crime. Here is the central problem of the prison, for within its walls the criminal has the right to such curbing of his passions as will lead to self-control. The use of drugs and drink are symptoms of a nervous and psychical break-down. They do not so much cause crime as they indicate the decadence of the individual. The instinct of sex, primal and noble in all healthy human beings, becomes wayward, lawless and often bestial. It is the business of the prison régime to balance and control rather than to destroy the natural instincts. The physician has work to do. There are questions of diet, a wholesome monotony and an opportunity to think. These are not enough. The prisoner must be furnished with such an objective view of life as will involve recognition of the rights of society, and a desire to help other people. By all the means employed he must become an altruist.

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The vast majority of prisoners are deficient in education, the education of the mind and the education of the hand. Many of them are young men who have had little or no home training, and most of them have not passed the grammar grades. The young men find the prison school of priceless value, and mature men often become intellectually awake. Multitudes of these people have no skill in any honest task. They should have been trained to gainful occupation in their childhood. That social duty has not been fulfilled. Even late, it must be done behind the prison walls. The prison has not been successful unless the man who leaves it is in a better condition to earn his living than he was when he entered.

As an incident to education within the prison comes the prison library. If Mr. Carnegie were anxious to do another fine thing in his life, he would seek expert advice and furnish the money to reorganize the prison libraries of the country. As a rule they have no real standards. There should be some man in the prison whose duty it is to know what the prisoners read, and who is able to guide them in the choice of books. Reading is a necessity to most men in prison. It is a necessity because books break down the walls at least enough to let the mind escape to other scenes and other lands. He has little companionship and little choice of friends. In books he comes face to face with the best there is in the author. I would not exclude all fiction, but I would shut out a great deal of it. Erotic, emotional and adventurous reading are not indicated. The poor fellow in prison has a right to a guide, and the man who would study him and is able to understand him, is of more worth than any other psychologist that was ever introduced into prison walls.

The right of the prisoner, more fundamental perhaps than any other, is concerned with a prophecy of his future. He has a right to be regarded as a potential member of society. No warden is fitted for his place who does not believe in possible successes. I am not pleading for softness or sentimentality; quite the opposite. I am pleading for an

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invigorating faith in man, backed by the strength of will and judgment of those who have the leadership of our penal institutions. There is no missionary or philanthropist who has a task of greater value. The warden is working upon essentially a religious problem. He is dealing with the regeneration of men. He must stem the tide of the false pessimism, so noisy and so cheap, which would have us believe that prisons are nothing else than the natural and permanent homes of human failures.

There are many ways to look at a prison. It is a workshop, it is a safeguard to society, but the essential point of view is that the prison is a moral hospital. The man has been sick and he has been sent here for treatment. This is not simply a nice figure of speech, it is the plainest prose. The prison management has a very complicated case, for their men are usually sick in body, in mind, and in character. Here again is the place for emphasis upon individual treatment. Every man must be studied for himself. If the staff of a hospital for sick bodies should simply classify the patients by their diseases and give all the patients in a class precisely the same medicine and the same food, the result would be little less than murder. The history, age, constitution, and all the other physical facts are taken into account and the skillful physician treats the man. Skillful diagnosis and individual treatment in prisons are a necessary form of justice.

But here arises another point, one of the most delicate in the whole problem. No one ever gets well in a hospital. He may improve, and the after-care of discharged patients is a matter of much concern. I used to wonder why it was that superintendents of insane hospitals did not like to say how many patients had been cured, they prefer to say they had "recovered." It is now pretty generally understood that the insane should be gradually introduced by simple steps to normal duties and functions.

The prison can only partially accomplish a reform. It will always remain an abnormal place for abnormal men. The discharged prisoner is in a state of moral convalescence.

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He is not entirely well and cannot be until he has re-established habits of freedom under suitable relationships, and deserves to be treated from that point of view. It was because he failed in the common life of society that he was sent to prison. If the prison has succeeded with him he is better fitted for normal relations than he was before he committed the crime, but he must be introduced to them gradually and under the guardianship of the state.

Skilled work and a place to work with suitable oversight are useful, but the man has a right to proper companionship and human sympathy. He needs not only the guardianship of the state, but he has a right to the help of those who believe in human righteousness because they believe in human souls.

The released man may limp a little. He may need a crutch. The Pharisee will kick away the crutch and it is hard to tell where the more serious danger lies, whether in the allurements of bad associations, or in the cold and repellent attitude of supposedly good men. The general attitude of society is one of severity toward public offenses which are often not nearly so bad as many wrongs easily condoned because they are private.

The discharged prisoner is also a man, and he very often has the high purpose of making a clean future. When society is better and more gentle and more largely filled with the spirit of the great lovers of mankind, the task of the released man will be more easy, and his success will be more certain. He has surely a right to the best chance possible. He has a right to a place by the common hearthstone, and he needs brotherhood as well as work.

SAMUEL GEORGE SMITH.

ST. PAUL, MINNESOTA.

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CULTURE AND DILETTANTISM WITH THE FRENCH.

CHARLES GRAY SHAW.

TO HAVE national culture and be free from barbarism seems to be the primary moral requisite for a people which is to exercise the rights of war, if not the rights of peace. Russia has been shown to be primitive, England practical, Germany transcendental, France æsthetical. In our own country, the sense of national unpreparedness along lines martial seems as yet to have been unaccompanied by the feeling of unfitness in things fine and intellectual. Can we fight without arms? Should we fight without ideals? As far as France is concerned, no one seems to have thought to question the right of the French to conserve their national ideals, so that it is not inappropriate but quite fruitful to inquire concerning the sincerity and consistency with which the Gallic mind asserts its artistic and intellectual principles. No critic dare repudiate the Gothic of the French nor deny that in France the drama received a treatment worthy of the classic master; if, in painting, France had no Renaissance comparable to the Florentine, the Barbizon men of 1830 revealed the fact that "painting" may vie with "art." Granted that French art may, at times, become Parisian, granted further that Gallic æstheticism has known the flamboyant, the decadent, the risqué, the superiority of the French creative genuis needs no apology.

But, the historical fact of culture is not necessarily one with the internal, spiritual principle of belief in culture; hence, one must meet French enlightenment with the query concerning the authenticity of that which the French genius has produced. Is French fineness culture or dilettantism? Has France shown faith in her works? Where the culture-problem is raised, it must be admitted that France has been the leader in the attempt to scrutinize the work of

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the intellect, has been equally advanced in weighing all culture-values. At the same time, it may be said that, in the history of French thought, practically every thinker who has considered the truth and worth of the intellectual life has concluded against intellectualism, so that the nation that has produced *les intellectuels* has never given a justification for them. For this reason, it is important to consider whether, in the last analysis, French culture is not dilettantism; whether the savant does not employ ideas as forms of play rather than as means of work.

When the idea of dilettantism is applied to the French mind, even when this is done in a furtive manner by one who would learn the secret of French culture, such dilettantism must be understood in the major sense. Such dilettantism as that in which the French excel consists in a full exercise of intellectual power, but always with the conviction that nothing will ever come of it. In a sentence from Renan, as quoted by Huneker, this paradox appears in most brilliant manner: "Man sees clearly at the hour which is now striking that he will never know anything of the supreme cause of the universe, or of his own destiny. Nevertheless he wishes to be talked to about all that." In the fatal "nevertheless" lies the secret of French dilettantism; the Gallic mind will handle things intellectual even when it does not believe that they will serve as the tools of truth. From this skeptical attitude the Anglican mind has been spared, because the Anglican mind has ever felt that the perceptible must supply the concomitant of its ideas; in a corresponding manner, the Teutonic genius has felt that reason is sufficient to carry man through to the end. Being neither wholly realistic nor wholly idealistic, the Gallic intellect has destined itself to an unconvincing form of culture in accordance with which neither the imitative nor the creative has appeared to authenticate the true, the good, the beautiful.

Unable to decide between the realistic and the idealistic in general, the French mind has suffered from such a superb attempt to comprehend the full meaning of culture that it

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has failed to distinguish between beauty and ugliness, good and evil, truth and error in particular; its special demon has been "the horrible mania of certitude," as Renan called it. In the attempt to explain this dilettantism in French culture, Bourget has sought to attribute it to a mental confusion due to the presence of an infinite variety of objects with many an appropriate conflict among them, while Morice viewed it as the deadening of the creative powers under the narcotic influence of the faculties of comprehension. With both of these critics of national culture in France, the point of view has been found in certain traits of recent French thought, especially that of Ernest Renan and his school, but to the student of Gallic philosophy the presence of this intellectual contradiction seems perennial. From the beginning in the Renaissance to the days of contemporary symbolism, the French mind has been so versatile, so resourceful, as ever to be learning and never to come to the knowledge of the truth. Or, to express this same thought in a manner more meritorious, the Gallic mind has never known that dogmatism which has habitually characterized both Anglican and Teuton.

In the realm of poetics, it is not expected, perhaps, that the artist shall be dialectical and thus supply the metaphysical ground upon which to base the beautiful; and yet, where realities are not deduced, they must be taken for granted. It is here that the French mind has been faulty; it has attained to reality by neither reason nor faith, whence its perpetual dilettantism. The English mind has proceeded undismayed by doubt because the English mind has not felt the necessity of authenticating its assumptions. In Germany and, more recently, in Russia, the need for æsthetical terra firma has been supplied by a downright attempt to substantiate a metaphysics of life. Was not Goethe metaphysical; has not Dostoïevsky been philosophical? Early in their spiritual history, the French acquired the habit of scrutinizing all the possible facets of truth without deciding upon any fixed point of view, an abhorrance for *idée fixe* perhaps. With Montaigne, it was

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a perpetual, What do I know? an endless interrogative. From such heights of self-examination, Montaigne then turns to sense, and says, "One must be dumb in order to be wise—*il nous fault s'abestir pour nous assaigir.*" It was this same Montaigne who originally sought the consolations of the garden of work when the intellectual solution of the life-problem seemed in vain. From Montaigne, Voltaire, Goethe, and Turgenieff must have borrowed.

Not only in art as an interpreter of life, but in religion as well has this dilettantism of intellect made its painful presence felt; here, the genius of Pascal was shown in a style most classical. From the time of Pascal to the present, no nation has made such frequent use of the word truth, and yet no nation has laid less claim to that ideal. Pascal was at home in the human intellect, and yet his every thought seems to breathe nostalgia for the true. Without levity, this saintly and straightforward mind declared that he placed his affair upon truth as one would place a wager. Perhaps Pascal did not know that, in betting, one cannot win where one cannot lose, for he assumed that, whether he turned out to be mortal or immortal, he was sure to win by wagering virtue. Only the Gallic mind, and only the Gallic mind in dire extremity, could devise such an original notion. As Pascal, so Descartes; this formal thinker uses skepticism as a means of arriving at a truth which, in the end, he has not the mental courage to affirm, while in the process of truth-seeking he felt called upon to deny some of the most obvious things in human experience, as the consciousness of the lower animals.

Where, as in the classic drama, the French mind does come forth with confidence in man, it was only by virtue of a certain noble blindness to the realities of life that the æsthetic assertion could be made. In the *théatre* of Corneille, "man" is considered in a manner so superior, so unique, so independent of nature that it seems to miss the point and to present, not man as such, but a quasi-human model constructed artificially from materials drawn by force from both classicism and Christianity. It is this

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alienation from the natural order which, in the mind of M. Cambon, constitutes the chief difference between Corneille and Pierre Loti. The French seem never to have found Man, who evaded the Cartesian analysis and refused to identify himself with the heroes of Corneille. What, then, has the French mind to do but to exercise its noble dilettantism, its endless search after that which it knows it can never find? The Gallic has never been the finder, the *Trouvère*, of which its early literature gave promise. At times, it has been humanity raised to an impossible height above nature; at others, as in the case of Rousseau, it has been nature triumphing over humanity, never has it been humanity in its own true world. As a result, there has never been in French culture a pure humanism as this was experienced in ancient Athens, as this was enjoyed in the Florence of the Renaissance.

Humanism comes into being when there is correspondence between the facts of the exterior order and the values of inner life. Where stolid science abides by the testimony of the senses, where religion adheres to the spiritual values of an intuitive inward life, art must come in to reconcile the claims of the natural and spiritual. This work of reconciliation French art has never been able to accomplish; where it has taken hold of the natural, it has grasped too much of the sensuous; where it has treated of the spiritual, it has so Gallicized this as to make it *spirituelle*. In thus following, not the root, but the ramifications of both nature and spirit, in the course of which artistic procedure it has shown a fineness and developed a perfection elsewhere unknown, French culture has ever shown itself *précieuse*, decadent, dilettante.

To the question, Is culture true and valuable? the modern has almost always replied in the negative. With the Gallic genius, this is most eminently the case. Elder masters of culture, Aristotle among the ancients and Bacon with the moderns, did indeed affirm the validity and value of man's intellectual life; practically all other prophets have found it necessary to negate the free exercise of the

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intellectual and æsthetical. Pre-eminent among the cultured opponents of culture stands Rousseau; indeed, one might hazard the hypothesis that, because of the supreme negation of culture presented by Rousseau, all who have come after him have found it expedient to follow his logic and thus conclude that liberal intellectualism makes for sorrow and disaster. Rousseau had before him the example of earlier French skeptics, but where Montaigne and Pascal had confined their attention to the individual, Rousseau advanced to a social point of view, whence he concluded that the influence of the arts and sciences had been a baneful one. From his eighteenth century position, Rousseau had the opportunity to observe how far afield the human mind may be drawn when it surrenders all to the powers of reason, for it was reason that had been supposed to support both religion and the state. Furthermore, the excessive fineness of France in the age of Louis Quatorze could not fail to offend the social sympathies of one who would lead something like a natural life.

In his argument against culture, Rousseau confines his attention to the political in general, the principle of political equality in particular. The culture of the arts and sciences has thus been disastrous in that it has brought about inequality among men not all of whom are fitted for intellectual advancement. With Plato, and Aristotle, too, this was the supreme reason for dividing men into classes, so that the aristocratic should have the opportunity of perfecting themselves intellectually, while the remainder of mankind should still find their place in an inferior order of society. Rousseau does not doubt that this is the real tendency of culture, but he questions whether it is a just and worthy one; his idea of a return to nature was advanced with the idea of readjusting men upon the new basis of equality. In his search after that life-principle which shall make man happy indeed, Rousseau finds it necessary to repudiate the culture of both the Renaissance and the Enlightenment, the arts of the one, the sciences of the other, so that his position is apparently that of the anti-

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intellectualist. In all this, Rousseau, himself a product of the culture which he despises, still upholds the ideal of inward perfection by means of culture, except that, in his naturalistic and humanistic intuition, such culture should be more suggestive of the natural order whence man has sprung, more conducive to the happiness of the human order to which he belongs. Indeed, one of the most essential elements of Rousseau's doctrine is found in the idea of free self-realization coupled with the contemplation of one's own soul-states, a culture-ideal indeed. Hence, with two opposed culture-ideals before him, Rousseau so fails to develop a constructive culture as to relapse into characteristic Gallic dilettantism, or that culture which one may enjoy without finding it convincing.

In the attempt to enjoy culture without intellectualism, the French mind has not failed to observe how the contrast between culture and work is calculated to produce a painful antinomy in the mind of one who is alive to the ultimate welfare of his own nature in particular, humanity in general. Aristotle and Bacon, ensconsed in their respective periods of successful culture, never hesitated to place the work of contemplation above the work of conquest. This arrangement seemed intolerable to the Enlightenment, where culture had advanced only as it had subordinated to the claims of the aristocracy the rights of the people. In a manner most dilettant, Voltaire turns to nature as the place of activity; where, with Rousseau, nature was the place of idyllic enjoyment, with Voltaire it became, as it were, the scene of useful work. "One must cultivate his garden—*il faut cultiver le jardin.*" In this fine maxim, Voltaire thinks to negate the intellect and affirm the will; yet it is to the "garden," not to raw nature that he would turn his energies. The "garden" is not the place of genuine work, rather does it suggest the relaxation and diversion of the man whose chief energies have previously gone forth in the field of intellectualism. Voltaire is dilettant in both culture and work, between which life-ideals his hesitating mind seems to urge him in shuttle-fashion back

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and forth. Thus to repudiate the intellect while recognizing and realizing the fact that the intellect will ever assert its rights is to make the culture-problem more than usually difficult, since it reduces the intellect to a mere play of thought whose dilettant effects can never be other than distressing.

This halting, uncertain intellectualism has never forsaken the Gallic spirit. When the nineteenth century offered Europe relief from the rationalism of the earlier epoch, other nations, especially the German, improved the opportunity to elaborate a characteristic and seemingly satisfactory form of speculative culture. The French still hesitated. Comte all but created an epoch when he came forth with his Positivism, but Positivism never satisfied its prophet, who turned from its forbidding formulas to the more Gallic mood of adoration, the adoration of idealized and feminized humanity. As Renan suggested, the French felt that they could never learn anything about that which concerns God and the soul, and yet they like to talk about such things. Indeed, it is the tendency to talk about problems which he cannot solve, rather than to cultivate the garden, which characterizes the dilettant, the augustly dilettant, spirit of France. At the latest dates, the Gallic mind is found neither believing nor doubting, but contemplating; as Huneker said of Anatole France, so one may say of the average French thinker, "He believes in the belief in God." Then, the case of Bergson, who seems to promise something for the future of French thought; but Bergson cannot quite come to an understanding with science, so that in the midst of his perplexities, he takes refuge in something quite Gallic, in "intuition."

If the Gallic mind has not overcome its dilettantism in considering things intellectual, it must be added that in the field of æsthetics, far more promising to the Gallic genius, it has again halted between two opinions. Excessive in its classicism, so that it could not really appreciate the freer methods of Shakespeare's dramatic art, the French genius was later found bending its energies in the direction

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of Romanticism. Yet, even here, it could not resist the temptation to parallel the romantic with the realistic. France had its Hugo and De Vigny, but did it not express its meaning, and that even more thoroughly, in Stendhal and Balzac? The romanticism of Hugo was always more picturesque than philosophical, since Hugo's psychology of emotion was always of the dilettant type. Balzac was a "writer" such as might appear in any other highly favored nation; Balzac raises no questions, so that he escapes dilettantism because he never turns his observant idea inwards. Balzac observes where his fellow writers introspect. With Stendhal, it was otherwise, for Stendhal was psychological; as a result, Stendhal creates a cult, *beylisme*, or Individualism.

In Stendhal, that sensuous nature which elsewhere showed itself in such writers as Balzac, Zola, and De Maupassant was turned to something like good account in the elaboration of an original doctrine of æsthetics. Beyle-Stendhal defined beauty as "a promise of happiness"; in so doing, he emancipated Nietzsche, and others, too, from the formal æstheticism of the Germans, of Kant. Stendhal thus expresses the Gallic sense of beauty, yet even here there is all the dilettant uncertainty of beauty as a "promise." Will beauty ever fulfill that promise? The English waited for Burke's frankness to express the dictum, "Beauty is pleasure"; then, the English sat back and enjoyed. Among the Germans, Baumgarten and Kant demurred; then, they proceeded to idealize pleasure until, as "pleasure minus interest"; the æsthetic became anæsthetic. The Gallic artist must now regard beauty in still another manner; beauty shall not merely repose in the sense of pleasure, still less shall it neutralize the emotional; beauty shall be the excess of pleasure, the pleasure of beholding plus the pleasure of anticipating. No longer anæsthetic, the sense of beauty became aphrodisiac. The attitude of Beyle seems indeed easier to assume than that of Kant, since it is natural for the human mind to look upon beauty as that which is calculated to intensify normal pleasure and thus enhance

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the objects of nature and history which the artist may choose. The landscape-painting which is the result of selective and synthetic work on the part of the painter, the romance which sifts the fine from amid the commonplace in human life, and the statue which artistically avoids the imperfections of human anatomy seem to yield the given pleasure of the object as a thing of nature, while they add the æsthetic pleasure due to creative, idealizing art. Yet, æsthetical science is more likely to be Kantian than Stendhalese. How is this to be explained?

The apparent failure of the French æstheticism of Stendhal is due to the fact that, with this extra-æsthetic doctrine of the beautiful, there is always the danger that art will run the risk of a dilettantism; that is, of decadence. Such was its fate in the hands of the French after Stendhal, when decadence and symbolism came in to prejudice the cause of the Grecian and Germanic ideal. Æsthetics became æstheticism, which is an exaggeration of the fundamental principle of beauty. The dilettantism of French æstheticism is thus one with the dilettantism of French culture; both consist in a treatment of the emotion or idea divorced from its object. First, it was thought for thought's sake; then it became, *l'art pour l'art;* the result is the same dilettantism which has been at once the guiding-star and evil genius of the Gallic mind. No nation like the French has done so much to identify and remain loyal to soul-states as such, yet this intrepid undertaking has reacted, and that painfully, upon the intellectual and artistic tendencies of those who were devoted to the inwardly true and beautiful. France has thus contributed to the culture of the world a dilettantism which has had the effect of clarifying and beautifying the soul-state without supplying it with reality. Such dilettantism, which almost invariably has been noble and effective, while not constructive, has been of a positive nature, so that it is never to be confused with that minor dilettantism which is so fugitive and superficial.

In French decadence, the excesses of dilettant culture assume their most perverse form, although no serious-minded critic should feel that decadence is to be regretted.

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Given a positivistic age which devotes and surrenders itself to the exteriorizing influences of science and sociality, and the noble subjectivism of decadent art will not lack for appreciation among those who are still so bold as to believe that the inner life as such is worth while. The decadence of Gautier and Baudelaire can hardly be called one thing, that of Huysmans and Barrès another; two types appear, but they are capable of mutual understanding. In its more general form, decadence was a consciousness in which the over-ripe, the bizarre, and the depraved were expressed with all the subtlety of a nuance-loving mind. Viewed psychologically, rather than historically, decadence, for which Poe had prepared us if we had only understood his art, was an attempt to trace the roots of thought, feeling, and impulse down into the dark soil whence they had sprung. Such decadence was capable also of manufacturing soul-states when these were not found in natural consciousness. The ethical effect of all this was to place the decadent outside the sphere whose poles were nature and society, leaving him in a position anti-natural and anti-social. Huysmans, in his novel, *Against the Grain*, persuades his hero to withdraw from the world of nature and society; Barrès attempts more militant methods, so that he becomes egoist and decadent at one and the same time.

For all this French dilettant culture is answerable, since French science and art have never been willing to assume appropriate metaphysical and moral responsibility. At times, the artist concludes that his character is guilty of too much thinking, as was the case with Flaubert; again, he seems determined to raise the intellectual, introspective tendency to an excessive height; seldom, if ever, does the Gallic artist indicate the right kind and due amount of intellectualism which is necessary for solving the problem of life. At the same time, it is not impossible to praise the French for the dilettantism which has had the fate to assume the decadent form with all the diabolism which is incident upon it. Were life and art always sincere and noble, the value of decadence would be nothing, less than nothing; then, perhaps, decadence had not arisen. But,

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when the issues of life become almost wholly utilitarian, so that the sense of free beauty is threatened by the adoration of use, it is a matter of satisfaction that decadence with its morbidness comes in to neutralize the effect of Philistinism. Whenever scientific and social thinking attempt to draw around the human soul the narrow circle of "nature" and "society," the soul is justified in employing practically any expedient in the attempt to escape from the snare. Hence, while the decadent rebellion was one of mood rather than of purpose, those who consider decadence from the outside are privileged to assert that, since the human soul is capable of such phantasies, it is vain to dictate just what human feelings and motives should be. In a decadent state, if such a thing were possible, the individual would have the privilege of possessing and enjoying his own inner life for better or for worse; in an industrial state, as this is being built about the sons of men, the demands of utility and efficiency are such that all must have practically the same ideas, must respond to practically the same motives. Decadence and dilettant culture may thus be regarded as a protest against and a salvation from the encroachments of an impersonal industrial order. For this way of escape the world is indebted to the French genius, which has always upheld the cause of the fine and significant.

With the French, dilettantism in culture has always been of an individualistic character, although the French themselves have not taken the leading place in the ethics of individualism. To the pioneers of French thought, *le moi*, as this appears in Pascal and Descartes, was supreme; Pascal may have found it hateful, Descartes inconsequent, but without it they had thought in vain. Rousseau, likewise, with all his fondness for the social order, was an individualist of the most advanced type. With Romanticism and Realism, the influence of the ego was predominating. It is true that, in the case of De Vigny, the ego was ineffective, was "powerful but alone—*puissant et solitaire*," but its ethical worth was no less marked. Stendhal made his egos more exalted and effective, although the contem-

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porary individualist must draw his strength and inspiration from additional sources, such as Dostoievsky's novel and Ibsen's drama. Nevertheless, the intellectual dilettantism of Stendhal and De Vigny did not fail to crystallize in a philosophy of selfhood.

The dilettantism of the decadence was likewise an influence for individualism, for decadence had the effect of making the inner life supreme in its art. Baudelaire felt the presence of the superman, *le surhomme*, within his own morbid soul, just as Barrès established a kind of egoism when he laid down the principles of *culte du moi*. Then, too, Barrès used his decadence to aid him in solving a problem which is one of the most perplexing of current questions: the reconciliation of selfhood and society. With Huysmans, the individualism of a decadent dilettantism assumes an absurd form, but no more absurd in its way than the average work on sociology. Huysmans makes of his Des Esseintes, in *Against the Grain*, an advocate of perfect inner existence in which nothing natural or social is allowed to stream in, but the contrite social thinker locks the individual out just as surely as Des Esseintes locked himself in. France had neither an Ibsen or Wagner to turn Scandinavian Sagas into the individualism of the Strong One; the limits of Gallic art would forbid this; yet France has been able to perfect the idea of the individual as the Fine One, the man who has the courage to adhere to his æsthetic ideals, even when he knows they be dilettant.

The dilettant culture of France seems then to have its place in the larger culture of humanity. It is true that French intellectualism has not succeeded in finding a foundation for its sentiments of truth, beauty, and goodness, true that in some instances it has tended to place the beautiful in a position superior to that allotted to the true and the good. Yet, without a metaphysical basis for its arts, morals, and sciences, it has not failed to give these a coloring which relieves somewhat of the drab of Anglican and Teutonic culture.

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ON THE CONVERSION OF ROUSSEAU.

NORMAN WILDE.

"I am now entering upon a task which is without precedent, and which when achieved will have no imitator. I am going to show to my fellow creatures a man in all the integrity of nature; and that man shall be myself . . . Let the last trumpet sound when it may, I shall present myself before the sovereign Judge with this book in my hand, and proudly proclaim, 'Thus have I acted; these were my thoughts; you see me as I am. With equal freedom and veracity have I related what was laudable and what was wicked. I have concealed no crimes, added no virtues; and if I have sometimes unduly embellished my narrative, it has merely been to fill a void occasioned by defect of memory. . . . Such as I was have I declared myself—sometimes vile and despicable, at other times virtuous, generous, and sublime. Even as Thou, Eternal Spirit, hast seen me, so have I laid bare my soul.'"

THESE opening words of the *Confessions* express that passion for reality which was apparently a fundamental trait in the character of Rousseau, that distaste for the artificial and conventional which finds expression in his glorification of the state of nature. From them we are led to expect that so far as the good will can effect it, we are to be brought face to face with the reality itself. And yet if there is one man better than another who exemplifies the hard doctrine that telling the truth is not a matter of the will alone, it is Rousseau. Try as he would to present his life as it was, he never succeeded in exposing it freed from the veil cast over it by his romantic fancy. From boyhood to old age he remained the hero of a tale, the plot of which was developed by sensation and interpreted by imagination. The world in which he lived was not a world of indifferent forces and objective laws, but a personal world of love and hate, good and evil, determined in its quality by its relation to the personality of Jean Jacques Rousseau. He had a passion for reality, it is true, but it was for a reality made such by its appeal to the

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emotions. Emotional, dreamy, lover of nature and the indefinite moods suggested by the changing out-of-doors, a vagabond all his days, his world never attained the fixity and objectivity belonging to that of either the idealist or the man of common sense. Of physical nature he had some knowledge, and into human nature he often shows a marvellous insight, but the world of his personal relations is shot through and through with the subjectivity of his own passions. Of his honesty, no one who has studied him sympathetically can doubt. He is ashamed of nothing, save shame itself. And yet by no single effort can he rid himself of his egotism and see himself apart from his exquisite sensibilities. We may supplement the *Confessions* by the *Rêveries* and the *Dialogues* and correct all by the letters, but everywhere we shall find a view of his life drawn by a man of whose training and temper Hume gave the classic analysis when he said: "He has read very little during the course of his life and has now totally renounced all reading. He has seen very little, and has no manner of curiosity to see or remark. He has reflected, properly speaking, and studied very little, and has not indeed much knowledge. He has only felt during the whole course of his life; and in this respect his sensibility rises to a pitch beyond what I have seen any example of; but it still gives him a more acute feeling of pain than of pleasure. He is like a man who were stripped not only of his clothes, but of his skin, and turned out in that situation to combat with the rude and boisterous elements, such as perpetually disturbe this lower world."[1]

It is to the failure to recognize the meaning of this soft fog of sensibility, wrapt close in which he groped his way through life, his vision dulled but his touch rendered only the more sensitive to the realities about him, that is due most of the difficulty of the central problem in the interpretation of Rousseau's character. The studies both by Sainte-Beuve in the past and by Faguet in the present,

[1] Burton's *Life of Hume*, II, p. 314.

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sharp as is their contrast, suffer from this same defect. And where critics have failed, psychologists naturally have fared no better. Rousseau could wish no greater tribute to his genius than this difficulty he has left us in distinguishing between the romance and the reality of his life.

From the point of view of the psychology of religion the central problem in the life of Rousseau is the question of its continuity or discontinuity: of whether the beginning of his literary activity marks a radical change of character or whether it is but the expression of a temper already formed; of whether this great preacher of morals was a "once," or "twice, born" man. Before the days of the scientific study of conversion it was taken for granted that as a deist and sceptic he was outside the sphere of conversions, but of late there has been a strong tendency to speak of his experience on the road to Vincennes as his conversion, and to regard it as a distinct turning point in his life. [2] Involved in this is the question of his fundamental temper in early life, and of whether it is possible to find in him a constant attitude which might render intelligible the apparent inconsistencies in his character and thought and form the psychological explanation of his philosophy of life. That clear-cut answers can be found to such questions as these is not to be expected, but the discussion of them may serve to render more critical our reading of the life of Rousseau.

Born at Geneva, June 28, 1712, the son of a watchmaker of French descent, and the grandson of a minister, Rousseau tells us that he was from earliest childhood emotionally over-developed. His mother, dying at his birth, left him to the care of his father whose sensitiveness he seems to have inherited. "When he said to me, 'Jean-Jacques, let us talk of your mother,' my usual reply was, 'Yes, father; but then you know we shall cry,' and immediately the tears started from his eyes." [3] In addition to this

[2] Cf. especially Wm. Cuendet, *La philosophie religieuse de Rousseau*, Genève, 1913.

[3] *Confessions*, Bk. I.

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cultivation in grief, his father read with him a small collection of romances left by his mother. These they read to one another by turns sometimes the whole night through, when his father, "hearing the swallows at daybreak, would say, quite ashamed of his weakness, 'Come, come, let us go to bed; I am more of a child than thou.' " The determining influences of such experiences Rousseau sees clearly enough.

"All kinds of emotions were familiar to me long before I had any precise idea of anything—I understood nothing, I felt everything. These confused emotions, following quickly one upon another, did not impair my future judgment, then non-existent—but they formed in me one of another character, giving me strange and romantic notions of human life, which notions neither experience nor reflection has ever entirely succeeded in effacing."

Starting out in life in such an emotionally satisfactory world, Rousseau was never able to realize the existence and naturalness of a less interesting type of reality and the history of his life is the story of his adventures and misadventures in this world of dreams. Even when he rouses himself in middle age and writes of evils and reforms, the outlines of his world are blurred and softened in the haze of his sensibility.

Started in this unfortunate way, there was nothing in Rousseau's early training to correct his tendencies. After a little schooling he was apprenticed for a while to an engraver, neglected his work, fell into poor company, developed unpleasant habits, and finally ran away at the age of sixteen, partly to escape the consequences of disobedience, partly to satisfy his wandering propensities. He was a great reader, a day dreamer, idle, deceitful, rather gluttonous, and given to petty thieving, habits which went with him through life and contributed not a little to rendering him unfit for society. He was left almost wholly to himself and his only guide was impulse modifying habit. His childhood was perhaps not much worse than that of many, indeed, he was undoubtedly endowed with an amiable disposition, but his infancy was too prolonged

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and reason was too late in attempting to acquire control. He was over thirty before the routine of life began to form in him the basis for a social point of view. As it was, he started out upon his adventures bent solely upon escaping from all the external restraints that might interfere with the satisfactions of his dreamy sensuousness and equipped with nothing save his own timidity to serve as an internal check upon his desires.

Fittingly enough the next few steps of this young wanderer were directed by the church. Kindly received by M. de Pontverre, vicar of Confignon, just across the border of Savoy, his inherited Protestantism was ready enough to admit, over a good dinner, that there might be something to be said on the Roman side of the religious question. Accordingly he was sent on to the fateful Mme. de Warens to be cared for and further strengthened in the faith, and from her in turn passed on to Turin where he was received into the school for catechumens and in due time renounced his Protestantism and was admitted to the Catholic Church. How much this change involved, it is impossible to say. It was made for the sake of food and lodging but endured nominally for twenty-six years, when the step back was made in order that he might become again a citizen of Geneva. But his temper was essentially Protestant and there is no trace of any fundamental influence exerted upon him by his new faith. On the other hand, however, in spite of his later glorification of the Genevan religion, at this time it seems to have been to him little more than a body of doctrines his intellect approved, but the personal significance of which was less than that of an offer of food and lodging. Formal religion of any kind was foreign to his nature. One might think that the Catholic ceremonial would have appealed to his sensuous disposition but apparently it did not. Rousseau must have room for the expansion and free play of his emotions and the definiteness and limitation of ecclesiastical ritual, however splendid, failed to appeal. For him, Protestantism came to mean free religion, a religion whose dogma could

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be reduced to the lowest possible terms, and whose worship could be identified with that glorious uprush and intoxication of spirit which for Rousseau could be obtained only from the out-of-doors. But this deistic Protestantism of his later life cannot be attributed to him at this period and in his passage from one communion to another we have a purely external process. The joy of following the call of the road is about all we can find of religious feeling in him at present.

That call he felt too strongly to stay long in Turin after his dismissal by his ecclesiastical instructors. Throwing up a promising position in a good family, he joined a compatriot and started for the north, trusting for support to the exhibition of a mechanical toy fountain which they possessed. Their fountain failed them before long, but not their spirits, which appeared to grow gayer with the dwindling of their purse. Arriving at Chambéry, Rousseau sought protection with Mme. de Warens and the connection, so important for both his character and thought, began. This was in 1729, when she was thirty and he seventeen. From that time till 1741, when he made his final entry into life by going to Paris, her house was his home, or headquarters. She mothered him, tried to find a situation for him in the church when he was deemed too stupid for anything else, encouraged his studies, formed his mind and partially his manners, admitted him as a second lover in addition to her steward, Claude Anet, to save him from less desirable connections, and finally gently urged him out of the nest under the influence of a lover less hospitable than the former. Such are the facts, their significance is harder to state. Emotionally, the period was stimulating and clarifying. His passions had been morbidly aroused in childhood and throughout his youth he had been sensitive to feminine presence, but it was not until his adoption by *Maman*, as he called her, that his passions received a definite object and attained their end. Even then it is doubtful how far he was really in love and how far the passion expressed for her in later life was not a love for her idea as it appealed in

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retrospect to his sentimentalizing imagination. For real experiences were to him of value as they served as stimuli to delicious reveries. Timid and awkward with women in the flesh, not given to vulgar vice, his real love passages were in his solitary rambles in the country where, free from the irritating restraints of social life, he could indulge his passion for ideal loves. In the absence of Mme. de Warens his feminine atmosphere was furnished by other and younger women, to two of whom he owed that innocent idyll in the country which is one of the most delightful scenes of the *Confessions*. It was this feminine intercourse that stimulated, clarified and perhaps almost refined, his emotional life. To the same end conduced his life in the country at *Les Charmettes* and his journeys afoot in Savoy and through France.

Intellectually, this was the time of Rousseau's education. With his father in childhood he had read Bossuet and grown enthusiastic over Plutarch; he had learned some Latin and a little of the other educational staples of the time under the Lamberciers in the two years of his schooling at Bossey; he had picked up a little more language and acquired some literary taste while in Turin; but it was during these years with Mme. de Warens that he laid the foundations for his writings on politics, education, and religion. Rousseau contended that he was never able to learn anything from a master, his fatal social inhibitions rendering him confused and apparently stupid in the presence of any demand upon his powers. But now in the intervals between his occupations and his wanderings he read widely in both French and English philosophy, as well as in the classics, Montaigne, La Bruyère, Plato, Leibniz, Malebranche, Descartes, Pascal, Kepler, Newton, Locke, Wallis. Catching his enthusiasm from Mme. de Warens, he began the botanical studies which were a resource for him throughout life. And it was perhaps largely under the same influence that his religious ideas began to take shape and that out of the various forms of his perfunctory creeds there emerged the sentimental deism of his later

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life. She herself had passed from pietistic Protestantism, with its emphasis on feeling and its ignoring of history, to a Catholicism in which dogma seems to have been determined largely by her individual sense of fitness, and it was this eclectic type of religion in which Rousseau matured and under the tutelage of this feminine theologian that he began to formulate his thought. Added to this personal influence toward a free and perhaps sentimental type of religion, was the negative and critical factor furnished by his philosophical studies. With no interest in purely theoretical questions and wholly without systematic intellectual discipline, his miscellaneous readings in philosophy both furnished him with a weapon against dogma and also served to convince him of the practical insignificance of all speculation. When he went up to Paris his attitude was sympathetically critical and sensationalistic, although it is probable that his closest approach to the materialistic position was not made until his personal intercourse with the Encyclopedists had begun, though it needed but a short taste of this to show him that his place was outside the camp of the *philosophes* altogether and that he must set up a standard of his own.

"I arrived in Paris in the autumn of 1741, with fifteen louis in my purse, and with my comedy of *Narcisse* and my musical project in my pocket. This composed my whole stock."[4] His rapid rise to celebrity and favor was astonishing—though not to him. He is recognized by Fontenelle, Marivaux and Diderot, and is favored by women of rank and intelligence. In less than two years he had become "l'enfant de Paris" and his dreams of social and personal success seemed in a fair way to be realized. But in 1745 he forms his connection with Thérèse Levasseur. Unable to read, scarcely able to write or to tell time, stupid, jealous of Rousseau's distinguished connections as well as of his friendships with women, and therefore at all times ready to foster his irritable suspicions of his friends, satisfied only amid the familiar neighborhood gossip of

[4] *Confessions, Bk.* VII.

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Paris and wholly incapable of sympathy with the new gospel of Nature—if not the main cause of Rousseau's disintegration, she was at least its most favoring condition. That he remained faithful to her for so long and finally acknowledged her as his wife is a tribute partly to his kindly nature and partly to his unwillingness to acknowledge a mistake. She bore him five children, all of whom he deposited in the foundling asylum and never reclaimed. As usual, his action at the time seemed to him natural and legitimate, children did not belong to his scheme of life in those struggling days, but, looking back upon his deed and trying to reconcile it with his idea of himself as the ideal of virtue he believed himself to be, it became the cause of his deepest remorse, as well as of his most ingenious and contradictory justifications. Meanwhile his growing egotism and sensitiveness were making life in Paris unbearable for him. Greedy of recognition, his essentially solitary disposition made him unwilling or unable to pay its price in social duties. The assiduity of his friends wore on him, he must escape to the country. Then Mme. d'Epinay offers him the Hermitage where he passed a year and a half, at first in an ecstasy of sensuous imagination stimulated by his passion, perhaps the only real one of his life, for Mme. d'Houdetot, and then in quarrels with his friends, as unable as Thérèse to understand his need of the country, and ceaseless in their well-meant attempts to recall him to Paris. One by one he parted from them. The story is painful and the rights of the matter not quite clear. Finally, with the publication of his *Émile*, in 1762, the bigotry of the authorities forced him to fly from France and begin that series of wanderings which terminated only with his death. Even Geneva, which a short time before had so proudly accepted him as a citizen, turned against him. At Motiers-Travers, his house was stoned. Hume and England offered him a refuge but his own morbid suspicions drove him back again to end his days, after several quiet years in Paris, at Ermenonville in the Valley of Montmorency, July 2, 1778.

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Looked at with even more than superficial attention, Rousseau's life seems to show in his forties a marked break. Up to the time of his coming to Paris and for some years afterwards, he gave little evidence of any strong moral interest, scarcely even of the possession of a moral sense. Whither he would go, he went; what he would do, he did; what he wished, he took, with no restraint save his amiable disposition and his painful self-consciousness. His only form of self-expression was music. But in 1749 came the offer by the Dijon Academy of a prize for the best essay on the subject of "Whether the Revival of the Sciences and the Arts has contributed to the Purification of Morals." Rousseau read this offer as he was walking out to visit Diderot in his prison at Vincennes. The effect was immediate.

"The moment I had read this I seemed to behold another world, and to become another man. . . . On my arrival at Vincennes I was in an agitation which approached a delirium. . . . My sentiments became elevated with the most inconceivable rapidity to the level of my ideas. All my little passions were stifled by the enthusiasm of truth, liberty, and virtue; and, what is more astonishing, this effervescence continued in my mind upwards of five years, to as great a degree, perhaps, as it has ever done in that of any other man." [5]

In his second Letter to Malesherbes, written in 1762, he gives a more detailed account of the experience, "which has made in my life such a marked epoch, and which will be always present to me, though I should live forever." Oppressed by such a violent palpitation of the heart that he was not able to walk, he threw himself down under a tree and "there passed a half hour of such agitation that on rising I found the whole front of my shirt wet with tears, without having been conscious that I had shed them." [6]

In the rush of this enthusiasm he wrote his prize essay, 1750, with its subsequent controversial pamphlets. Then came his unsuccessful *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*, 1754, followed by the *Nouvelle*

[5] *Confessions, Bk.* VIII.
[6] *Lettres à Malesherbes.*

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Héloïse, 1761, the *Contrat Social*, 1762, and *Émile*, 1762, the latter also with its aftermath in the *Lettre à Christophe de Beaumont*, 1763, and the *Lettres de la Montagne*, 1764. In all this we see the man with a mission, the prophet of the freedom and simplicity of nature. The idle apprentice seems to have given way to the preacher of righteousness and a life of rugged virtue to have succeeded the years of aimless indulgence. Somewhere in these middle years it has been thought that Rousseau underwent a form of conversion, perhaps on the road to Vincennes as he read the *Mercure de France*, perhaps in his hours of remorse as he realized the meaning of the abandonment of his children.[7]

But if we consider both the temper and the acts of Rousseau in the light they cast upon one another, we shall see that the terms conversion, or acquisition of a moral sense, are too strong to characterize his experience at this time. The change was greatest, not in character, but in its expression; not in life, but in letters. The year 1749 marked the attainment of his literary majority, the clarification of his dreams, and the discovery that he had the power to clothe them in those burning words that went straight to the heart of the eighteenth century. But these dreams were not new. From childhood he had cherished ideals with enthusiasm. That they had had small effect upon his conduct but rendered his devotion to them freer and more wholehearted. He could let himself go in a riot of virtuous imagination with the quieting consciousness, or subconsciousness, that its cost had not to be reckoned in deeds. And now that his ideas had grown clear and he could see them as visions of a regenerated world of kindred simple souls, his enthusiasm was redoubled. The preacher had found his tongue and was

[7] For the former theory see Cuendet, *op. cit.* p. 218 and references. For the latter interpretation see Faguet, *Vie de Rousseau*, *ch.* xiv. The continuity of Rousseau's religious development is, on the other hand, over emphasized by D. Parodi, *La philosophie religieuse de J. J. Rousseau*, *Revue de Métaphysique et de Morale*, xii, p. 275.

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enraptured by his own eloquence. Simplicity, benevolence, justice, kindliness, independence—had he not loved these all his life? Was he not indeed the virtuous Jean Jacques, the first born among his future brethren of the simple life? From his first taste of the country at Bossey, he had known it as his own. Throughout his youth it had been among the unlettered country people that he had found the truest kindness. It had been in the freedom of the fields and mountains that he had known his greatest peace. But it was not until he had lived in the city and felt its pressure upon his personality, the contrast with his ideals, that his inarticulate dreams acquired words and his new gospel dawned upon himself. He had been well received by the thinkers of the day, he had gone in and out among the sensationalists and materialists of his circle, he had been attracted by the simplicity and assurance of their philosophy to the extent of using it as a weapon against theology, but his spirit had never been theirs and his attitude had been a constant protest. Under these conditions it needed but the announcement of the subject of the prize essay to precipitate his thought and to reveal him to himself as a man with a mission to his age. His ecstasy, his tears, his delirium, his exaltation, these signs that in another might mark the overturn of a character, were in Rousseau but marks of successive summits in life. They indicate emotional, not moral, crises. In this case the crisis carried with it the beginnings of his literary activity, but that it meant revolution in character or even change in ideals, there is no sound ground for believing. Indeed, in the very account of this experience he tells us that in the revelation of the sources of social corruption was included his discovery that "my own evils and vices came much more from my conditions than from myself."[8] It was these that were to be changed rather than himself.

But before looking more closely at the facts, there is another theory of change in Rousseau's life which demands

[8] *Lettres à Malesherbes.*

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consideration. According to Faguet, this change was a gradual one, induced by a growing remorse for his abandonment of his children, and resulting in his acquirement of a moral sense and the attainment of a virtuous character. "C'est précisément ses crimes de 1747–1753 et les remords qu'il en a eus qui ont fait de lui peu à peu un très honnête homme et surtout un fanatique de vertu, une tarantule morale, comme l'a appelé Nietzsche." It is to this remorse that we owe his preaching of the true, the beautiful, the sound, the life of the family and of the state, as well as his own honesty, generosity, charitableness and devotion (at least after his affair with Mme. d'Houdetot) to Thérèse. "L'abandonnement de ses enfants par Rousseau a coupé sa vie en deux . . . après il connut le sens moral, et à travers toutes ses folies il fut d'une haute moralité et il eut même cette indiscrétion dans la prédication de la morale qui caractérise, aux rues de Londres ou de Boston, les anciens pécheurs. Rousseau moraliste, c'est Rousseau criminel." [9]

For the facts of this remorse several passages may be cited. In writing to Mme. de Luxembourg in 1761 he says, "the ideas with which my fault has filled my mind have contributed in large part to my planning the *Treatise on Education*," and in the first book of the *Émile* we read, "I prophesy that whoever has a heart and neglects these (paternal) duties will long shed bitter tears and never be consoled." And of this passage he remarks in the *Confessions*, "In planning my *Treatise* on *Education* I felt that I had neglected duties from which nothing could excuse me. The remorse at last became so intense that the public avowal of my fault at the commencement of *Émile* was fairly wrenched from me, and the allusion itself is so clear that after such a passage it is surprising that anyone should have the courage to reproach me for it." Later in life it seems to have been hardly possible to speak of children before him without arousing his suspicion that reflection

[9] *Vie de Rousseau*, pp. 165, 166.

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was being made upon his own conduct. At the same time, however, we must remember that there are even stronger passages in which, so far from showing remorse, he justifies and even boasts of his act. In a letter to Mme. de Francueil of the 20th of April, 1751, he pleads poverty and rejoices that his children are to be brought up as honest peasants or workmen rather than as members of the cultured class. In his *Confessions* he pleads the customs of his circle and again glories in the fact that he was acting in this matter as a citizen of Plato's republic. He is willing to admit in these later years that he may have made a mistake, as his heart sometimes warns him that he had, but that he should have been really an unnatural father and acted contrary to his convictions of law and morality, he cannot bring himself to believe. And in his *Rêveries*, those final reflections upon his life, we find his last word, "I would do it again, and with much less doubt, if the thing were to be done, and I know well that, however little habit had aided nature, no father is more tender than I should have been to them."[10]

As one compares these passages one cannot but feel that while at times Rousseau may have felt remorse for his acts, the dominant attitude of his life was one of virtuous satisfaction, even his expressions of regret being largely out of deference to the judgments of his fellows. What depth of remorse can we assume in a man who feels that the slight reference to his act in the early part of the *Émile* should have exempted him from all reproach? And what clearer suggestion could we have that both remorse and satisfaction belong to the world of moral posturing, and are determined by the parts he has set himself to play?

But grant that often between 1751, when he wrote his justifying letter to Mme. de Francueil, and 1761, when he was writing the *Émile*, Rousseau had shed bitter tears over having given his children the opportunity of being educated to the simple life of the virtuous peasant, is there

[10] *Rêveries*, IX, *Promenade*.

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evidence that these tears were the signs of an altered life? He had been a liar in his youth, he remained one now; he had stolen to avoid the discomfort of asking for what he wanted, he was not above the same thing yet; he had contracted morbid sexual habits, he continued them in mature life; he had been inconstant in his affections, he was still at the mercy of women; he had had a mistress before, to whom he had but once been unfaithful, his relations with Thérèse were irregular for twenty years and also with but a single slip. And above all, there had been growing through all these later years that intense, self-conscious egotism that is the dominant fact of his later life; that sensitive pride that made his social life impossible and drove him beyond the limits of his self-control. It is true that he was lovable, as proved by the long succession of his friends and the devotion of a few even through alienation, but this had been his natural temper from a child. It is true that he was religious and the apostle of a new religion for his rationalistic age, but there is no evidence that his youth had not also possessed in germ that enthusiasm for nature and the simple life that was stimulated and made definite by the experiences of the city. It is true also that he became a powerful preacher of benevolence yet he himself was unable to endure the ties of social life.

No, so far from Rousseau's life being "cut in two" by remorse, it is marked throughout by continuity, longitudinal, if not transverse. Failure to recognize this is due to failure to realize that sharp break between his imagination and his conduct which is the central fact of Rousseau's life. In his acts he is dominated by a sensitive self-love, showing itself now in a morbid desire to escape from social responsibility, again in an equally morbid sensitiveness to the attitude of his friends, and still again in his love for that emotional intoxication he experienced in the presence of women, nature and God. There seems hardly an unsocial act he would not have been willing to commit under the impulse of his timid instinct of self-protection.

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The lies, the pilferings, the deserting of his children, his quarrels with his friends, his affairs with women, all become intelligible upon this principle. But at the same time there is no difficulty in recognizing that all these acts are quite compatible psychologically with the most ardent enthusiasm for justice and virtue. It is the application of these ideas, and of the enthusiasm for them to life, that constitutes morality, and it is this that Rousseau failed so signally to achieve. The moment of action found him instinctively seeking to escape from the situation that faced him, covering his head like an ostrich in his attempt to shut himself away from the world to which he felt himself unequal. It was no question then of principles, but of self-protection; and the weapon nearest at hand was the one which he grasped. But when the stress of the present was past and there was no confusing demand for action, ideals again took their place and moral sentiment filled his life. At such times his own acts could not but reappear for judgment to be tested by the principles then dominant. Often they were condemned, yet so weak was Rousseau's sense of reality, and so much was his real world a world of imagination, that the self upon which judgment was passed was a self transformed and glorified to suit the atmosphere of the judgment hall and the moral character of the judge. It was impossible that the culprit related to so virtuous a judge could have done the deeds with which he was charged. His very confession of them was proof that after all they must have been done with good intent or in ignorance of the facts. "Jean Jacques could not have been an unnatural father," he cries—does he not now love to play with children and is he not now pained at the idea of such desertion! And similarly, distracted with passion for Mme. d'Houdetot, the wife of one man and the mistress of another, and himself the lover of Thérèse, he can in all gravity and sincerity chide, though charitably, the successful lover on the subject of the sinfulness of his relations with his mistress.[11] There is no

[11] *Correspondance* Ed. Streckeisen—Moulton, I. Letter to Saint-Lambert.

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hypocrisy here, only an absolute separation between the abstract and the concrete, a failure, as Aristotle would say, to supply the minor premise of the moral syllogism. Again and again in reading his words of sound wisdom and noble feeling, our judgment falters, and only a fresh appeal to the facts can protect against the charm of his written word.

Whether in view of these facts one can justly speak of Rousseau's having acquired a moral sense or developed a moral character, is a question. That there was no moral overturn or conversion, we have seen. That moral principles ever became the determining motives of his actual life, has also appeared more than doubtful. To the end of his days he was a man driven before his feelings, for whom escape came only with death. And yet, while there was no new creation, there was growth. The conscience of his old age, weak though it may have been in its control of conduct, and indebted as it was in its principles to his inheritance from Geneva, spoke with a strength and authority unknown to his youth. The moral point of view, known and admired before, became, under the stress of life and reflection, his habitual standpoint. He became that "moral tarantula" to whose bite he was himself largely immune, but whose sting was a notable stimulus for his generation. In character, too, there was change. Not, it is true, a putting off of the old man and his deeds, but a growth in seriousness and steadiness of purpose. How far this was due to age and disease, how far to fascination with his own preaching, how far to the hard discipline of life and his own reflection, one cannot say, yet true it is that in spite of all the obvious meannesses of his personal life, of his cowardice and fear of ridicule, of his principles he was never ashamed and from his preaching he was never deterred. Slow in coming to expression as his dreams were, sentimental as was the form which they took, slight as was their hold on his personal life, his faith and enthusiasm for them grew only stronger with his advancing years. Recognizing to the full the gap between the world of his

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imagination and his life, we still must admit development even though it be only in his character of a hero of romance. A hero of romance he had been in his youth, a hero of romance he remained to the end, with wider outlook and more chastened spirit, yet first and always the prophet of romantic individualism and the rights of the heart.

NORMAN WILDE.

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THE MORAL RESPONSIBILITY FOR WARS.

STEPHEN H. ALLEN.

IN PLACING the responsibility for the horrors of the present conflict in Europe it is usual to speak of the nations involved and to regard Germany, France, Austria, Russia and England, each as a distinct entity, morally responsible for all that is done by its rulers, armies and navies. At the same time we know very well that none of the common soldiers or sailors who suffer death, wound or disease as a result of it have had any direct connection with its inauguration, and none of them could have prevented it. The organization of their governments places the power to levy war in the hands of those least likely to suffer from it, without leaving a veto or even a referendum vote to those who are called on to make supreme sacrifices in it. These facts, however, do not necessarily exempt the sufferers from all moral responsibility for the conditions that finally induce war. The men by whose determination war is instituted base their action on what are assumed to be national interests or obligations; never on the general welfare of all humanity. They never weigh the evils that will result to all human beings it affects against the good it will bring them. If they were to do so, fairly and honestly, there would be no war. They look mainly to their own people for approbation, to be based on the injury and wrongs inflicted on the enemy. They ordinarily gain applause at home if a large majority of those killed in the strife are their adversaries, and neutrals are prone to pass favorable judgment on their military achievements without much comment on the wickedness of their motives or conduct. The fact that the people of their own country have suffered in less degree is deemed good ground for rejoicing rather than mourning.

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As an ideal character, the instigator of war is a human monster who takes delight in wickedness and savagery; but, when we look for the man who is to be charged with this acme of moral depravity, we fail to find him. The evil spirit works in so many ways and through so many instruments that each man puts forth a justification of his own motives and conduct that satisfies his own countrymen and even neutrals and enemies.

The present war in Europe is not only the greatest conflict in historic times but in some of its aspects is distinctly more savage than any other of modern times. New means of destruction are used to perpetrate new and heretofore discountenanced barbarities. Submarines, air crafts, concealed mines and long-range guns are used to slaughter civilians, women and children, as well as armed men. To guard the secrecy of military operations, newspaper correspondents are excluded and violations of the low moral code of war are not made public as in former wars, nor are the kindly deeds of soldiers publicly commended. Lack of glorification of the leaders in the conflict affords but slight compensation for lack of opportunity for public criticism of the savagery of the struggle. Savage expediency demands concealment of its work and overrides the rights of civilians and neutrals who come in its way. The food provided for the occupants of peaceful homes, old, young, men, women and children, is ruthlessly seized or destroyed, often with the home itself, on the plea of necessity. In fact there is and in the nature of things can be no necessity for such horrible crimes. The real motive is savage expediency.

But who are the savages and how do they make the kind-hearted, peace-loving people do the horrible crimes which in the aggregate are called war? Why is it that the world goes on from century to century with frequent recurrences of similar manifestations of savagery and that this supposedly enlightened age witnesses the worst one of modern times? The motives of every great war will be found to include all those which actuate the murderer, the robber, the perpetrator of arson and of all the inferior crimes that

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are incident to war. What men are actuated by such motives?

In a strictly autocratic military government, the responsibility appears to be located in the autocrat and his advisers. The men holding these relations to the people under them are parts of an established system and have all been taught the code of war from infancy. International law accepts it as a method of determining controversies between nations. The preservation of internal order is supposed to depend on the military organization, which is used without hesitation when occasion seems to require it. The subjects come in contact with neighboring people more or less of whom are regarded as hereditary enemies. Whenever they suffer wrongs or affronts from foreigners, they naturally look to their rulers for protection. The policy of such rulers is generally to maintain sharp lines of division between their own subjects and those of their neighbors. The facts that neighboring people are really interested in the prosperity of each other and dependent in some degree on friendly intercourse for their own highest good and that each suffers from its own military incubus are not discerned except by the few. Even in the most democratic nations, patriotism is a virtue greatly extolled and in all countries the masses are taught that it demands unlimited sacrifices for the preservation and aggrandizement of the nation in time of war.

The chain of influences by which military rulers secure obedience to their commands and often enthusiastic support in aggressive wars is long and complicated. Some of its links are large and easily discerned but many necessary minor ones are not obvious. Education of the young to adore physical power and the false glories of war regardless of the fundamental ethics of human relations is the broad foundation of every military despotism. History is written to magnify the deeds of warriors, to give false color to their moral qualities, and to impress on the multitude the belief that wars are necessarily incident to the relations of nations. The lesson is taught in essence if not in words

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that the common brotherhood of man is limited by national boundaries, and that whatever of peace, security and prosperity is enjoyed by the people is dependent on the ruler and the army and navy at his command. Unquestioning submission to authority is extolled as the highest proof of patriotism. Every resistance of arbitrary power is termed treason, the most odious of crimes, and punishable with death. As a further preparation of the foundation for military despotism, the memory of past wrongs from neighboring people is constantly refreshed and old distrusts and hatreds are kept alive by recounting every current act and expression that can be given an unfriendly significance. On a base so prepared the military structure is reared, propped, and buttressed by every influence that can be brought to its support. The single head, by whatever name called, is a conspicuous, dazzling, but not necessarily vital part. The Prætorian Guard of the Romans made and unmade rulers of the then known world. Imbeciles with a kingly or imperial title have in numerous instances in France, Russia, Turkey, China and other countries furnished the name for powers exercised by others, while themselves prisoners in the hands of their masters. Every military government has its military order, though not designated as a caste as in India. This order has its coterie of leading spirits surrounding or constituting the real head of the nation. Each of its members is dependent on the system for rank, power, influence and wealth. Beneath these are officers of every grade from commanders of armies to corporals, each distinguished from the multitude by his rank and attached to the system which gives him his distinction. Each looks to the great military machine for promotion and gratification of all his ambitions. Military schools send forth their graduates full of enthusiasm for the science of destruction and looking forward to the next great conflict for the opportunity to achieve distinction. Even the common soldiers share in the pride and insolence of a military caste. The civilian must stand aside for the soldier.

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Interest in life centers in its activities. An army is only quickened into the life for which it is designed by the activities of war. Action and danger give zest to life, and, notwithstanding the knowledge that battles will take victims from their ranks, the army and navy are always foremost in clamoring for war. The larger and more perfect the organization, the stronger is the military spirit. An insult, a threat or a favorable opportunity for aggression excites the leaders, whose sentiments are quickly disseminated throughout the whole mass. In every government in which the military is placed above the civil power, the head of the army determines the question of peace or war. Among the civilians in a country dominated by the military order, the most powerful classes are those who manage the finances and furnish supplies to the army. These fatten in security on the devastation of war and are often the first and most persistent clamorers for it. The great, peaceful, toiling multitude is neither aggressive nor influential, and usually echoes the sentiments of the war-like elements. The religious organizations would naturally be expected to oppose their forces to the war spirit, but in fact they far more frequently add their sanction to it. In Russia and Turkey the head of the army is also head of the church.

With this combination of influences acting on public sentiment, it should not appear surprising that the people of each country engaged in the present great war are united in favor of its prosecution and loyally support their government. It has always been so in every well-organized military nation. My country, right or wrong, is a maxim generally accepted. But the war spirit is not necessarily dependent on these influences. Waves of passion sweep over nations that are lacking in military preparation and drive them precipitately into war. Notwithstanding all our antimilitary teachings and customs, our Civil War was more destructive than any European war after the time of Napoleon till the present conflict. Nor was there more adequate cause for it than for other wars. The institu-

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tion of slavery in part of the Union afforded no adequate reason for the wholesale destruction of each other by the slaveholding and non-slaveholding whites. The moral responsibility for the conflict rested with intemperate agitators, north and south, who appealed to local sentiment for and against the institution to arouse hatred and further their personal ambitions. The little democracies of ancient Greece were quite as prone to go to war and quite as desperate fighters as their contemporaries who were ruled by tyrants. The Swiss, the most democratic in their ideas and organization of the people of Europe, were, and if forced into conflict now doubtless would still be, most valiant and successful warriors.

The peaceful teachings of the Christian religion are taken to heart only in times of peace. The nations professing Christianity have fought each other as much, killed and robbed each other as much since the time of Mohammed as Mohammedans have fought, killed, and robbed each other. Mohammed taught the propagation of the word by the sword while Christ taught his followers to love their enemies and return good for evil, yet Christians have attacked Mohammedans as frequently as Mohammedans have attacked Christians. The peaceful principles of Gautama appear to have been better adapted to the dispositions of his followers in eastern and southern Asia and taken more to heart by them than the teachings of Christ by the fierce Europeans.

In generalizing the lessons of history, we are forced to the conclusion that the effects of religious teachings and priestly ministrations are largely dependent on the character, stage of civilization and environment of the people taught, and that nominal conversion to any doctrine or belief does not necessarily change the feelings, impulses or actions of a people. It must be confessed, that the essential principles of Christianity concerning the relations of men to each other are right now wholly ignored by the most powerful nations of Europe. We still live in an age of brute force, an age in which teachers in some of the great

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schools deny the authority of God's moral law, but it is an age in which not merely a few but great numbers see clearly the wickedness of war and of its advocates. This might also be said of some of those living in any age. The distinct progress that is apparent is in the widespread and persistent demand that the organized forces of governments shall be so reconstructed that wars between nations shall be prevented as each nation prevents its citizens from warring with each other.

Notwithstanding the appalling savagery which is now manifested and which has been exhibited in the recent past, much real progress toward universal peace is easily discerned. The destructive wars between savage tribes are things of the past in America, North and South, and relatively rare in Africa. Tribal wars everywhere have meant barbarism and sparse population. Europe and some of Asia passed through a long period, called in Europe the feudal age, in which wars between the organized forces of local leaders within the state were recognized as permissible and calling for no interference from the overlord. In Europe and until recently in the United States, personal wars, duels, were allowed and even compelled by public sentiment. These have become far less frequent in Europe and are altogether prohibited in the United States. Societies for the promotion of peace have multiplied rapidly throughout the world and those in neutral countries were never more active and determined than now. The Hague conferences have pointed the way toward permanent peace, though they have not yet succeeded in inducing the great nations to travel in it.

The private citizen who carries deadly weapons becomes an object of suspicion and thereby invites a conflict with his enemy. He thereby jeopardizes his own safety even more than that of his adversary. The old castles of feudal lords filled with armed retainers guaranteed the continuance of petty warfare between rival leaders. The great armies of Europe, organized for similar purposes, guarantee

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the recurrence of bloody wars. These, like the robber bands of the castles, must give way to civilization.

But the history of our own country proves that unarmed and unprepared people may give way to passion and plunge into deadly strife. We are of European stock and inherit not only the blood but the ideas and impulses of remote savage ancestors as well, if not in as full measure, as do our kinsmen of Europe. The blaze of war once started affects us as it does them. Those on each side of the conflict fan the flames and add fuel to the conflagration. Substantially the whole mass of the people of each country involved assumes responsibility and justifies the killing of its adversaries. The impulses of the savage tribe dominate in the great nation. The clergy on both sides pray, not that their partisans may have their eyes opened to the moral quality of their acts, not that they may have courage to forgive their enemies, but that the Creator of all will help them to kill, rob and destroy their adversaries and play the part of a helpful Mars, Thor or Siva.

Let us humbly confess the sorrowful truth that in dealing with other nations the people of every country on earth at times deny the binding force of the moral law, deny God's law. Leaders give the command, the multitude applauds and the mad carnival of crime begins. When war is on, everybody disclaims responsibility for its continuance, and gives all his energy and thought to the fight.

No one man, no small coterie of men was responsible for the code duello or the private warfare it enjoined. No one man, no particular organization of men, was responsible for feudal warfare. It accorded with the moral standards of the times. So international warfare has had the sanction of general public sentiment throughout all time. Every one of us is responsible in some degree for the immorality of the accepted code which fixes the relations of nations. We are all conscious or unconscious builders of public sentiment.

It seems evident that the cure of wars between nations must be similar to that applied to private wars of all kinds and that it includes:

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1st. The creation of a public sentiment throughout the world that will deny the right to inaugurate war and amend international law accordingly, so that universal condemnation will be visited on the wholesale murderer. This sentiment must be so crystallized and toughened that it will stand the strain of selfish interests, popular clamor and excitement.

2d. Disarmament; the stripping from all great nations of their separate military functions, just as the states of the American Union have been stripped of theirs.

3d. The provision of a peaceful substitute for war in the form of a tribunal to which all controversies between nations shall be submitted.

4th. The creation of an international force of some kind to carry out the tribunal's decrees. An adequate public sentiment rendering physical force unnecessary would doubtless result in time. No physical force is ever used to enforce a judgment of the Supreme Court of the United States on the states of the Union even though the loser denies the justice of it.

Public sentiment is the sum total of private sentiment. Every sane person in every state is responsible for the influence of his utterances in public and in private, spoken and written, for they are a part of the expression of public sentiment. To some it may seem more courageous to advocate war than peace. To some there may appear greater honor in killing a citizen of another country than in helping him, greater honor in killing many than few. To some the booty gained by war may appear more attractive than the peaceful gains of industry and commerce. To some the moral law, the law of the Creator may appear without force or sanction. Applied to private affairs, these are the views and sentiments of criminals. What is the moral quality of such views and sentiments on the subject of international relations? Every act and utterance that tends to war tends to immorality and crime. If nobody advocated war there would be no war. If everybody called war by a name including all the long list of awful

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crimes it necessarily entails, few, if any, would have the hardihood to advocate it. Public sentiment is morally responsible for war. In the creation and expression of it each citizen does or should do his part. No one of us is exempt from bearing his share of this responsibility. Some may escape from service as soldiers; some may escape from the payment of taxes or bearing other public burdens; but none of us can escape moral responsibility for our contributions or want of contributions to this public sentiment. It follows, then, that the people of a nation that wages an aggressive war are responsible for the sentiment that causes and undertakes to justify it in varying degrees according to their respective positions, opportunities and capacities.

STEPHEN H. ALLEN.

TOPEKA, KANSAS.

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WHEN PEACE BREAKS OUT.

C. DELISLE BURNS.

PERHAPS even the present war will end. But the moral problems to which it has drawn attention will not be solved when peace breaks out. Indeed they will be more pressing and, although it is perhaps twenty years too early to think of peace, we may now see the problems shaping themselves. I put aside the actual moral issues of the moment.

The immediate practical judgment seems to be that resistance is necessary, the loss entailed if resistance were not offered would be greater than even the loss due to unsuccessful resistance. Political liberty of the group, characteristic development and all that intangible atmosphere which makes what is called England or France would be imperilled by non-resistance. That is to say the evidence of the past is sufficient to show that the political domination of a group which has adopted the principle of denationalising weaker groups would, even in the twentieth century, mean that English institutions would be abolished. I put it frankly from the point of view of one side, because that side happens to be mine.

It is for the Germans and Austrians to find justification for their fighting. One can understand that they, too, fear political domination by nations which have suppressed Poland, impoverished Ireland and, in former days, aimed at military conquest on the continent. There is enough evidence in the *Spectator* and in the *Morning Post*, so far as England goes, that there would be danger to German nationality. But in spite of the evidence on which German judgment is based, we maintain that it is mistaken.

The *Spectator* and the *Morning Post* do not represent English political thought, nor is their influence as great here as the influence of that party in Germany which has undoubtedly an aggressive policy.

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There is, however, the larger and more fundamental moral issue to be discussed. Granted that here and now resistance is morally justified, is there any moral limit to the use of resistance? First are there any things which it is not morally right to defend; and of the things which should be defended are there any acts which not even danger to them can justify? We abruptly dismiss the first problem. The England of the *Spectator* and the *Morning Post* is not only not worth defending but it would, in any sense, be morally wrong to defend it. For it would be defending the power to infringe on the liberty of others. My grandmother may be very dear to me and worthy of support, but she cannot expect to be assisted in her designs of starving her servants or insulting her neighbours. If there is any hesitation to take up arms or to assist the state in England, it is due to the not unreasonable fear that the ruling classes (we are not a democracy in fact) may take advantage of national enthusiasm for our own institutions to destroy the institutions of other peoples; and since tyranny never stops at "foreigners" the next stage may be the oppression of the working class even in England, More political judgment is to be found in the average English voter than the leader-writers of the conscriptionist press suspect. When that press screams "England is in danger," the unheard reply comes in the conversation of the majority—"The immediate danger is perhaps Germany; but behind even success against her lies the danger from our own militarists of the destruction of everything we fight for." I personally have heard that reply many times, but it has not been published so frequently as the call to arms. What we are to defend makes a difference to the morality of the act of defence: to defend the power or the will to wrong-doing is wrong. We know that.

The second problem is vital. Does the defence even of what is admirable justify the use of any means whatever? I do not propose to discuss the limitations of force in war, for it is the general question as to the moral position of the state which is in question and that will only be seen when peace breaks out.

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What then are the principles of that inevitable conflict that will come with peace? In this case, as in the case of the actual war, the conflict is not only of interest to the combatants but to the whole world. There are moral issues at stake in the political sphere which are indeed now obvious, but from which our attention is, not unreasonably, diverted to the immediate moral issues of warfare. What precisely is the state? How can any government take over the responsibility for acts performed by its citizens? Why should peasants from the Tyrol suffer because of acts committed by Berlin hooligans in Belgium at the command of their superior officer? Who is responsible when the government induces its agents to suppress conscientious opinion or murder children because the state is in danger?

We may put aside as not of immediate interest the several acts which, because they are obviously immoral, no one now supposes the state can command its citizens to do. The state cannot command polygamy or the eating of parents and perhaps some few other practices of our ancestors. At least even the state-absolutists do not suppose that such commands would be effective. But between these acts and the acts which the state can command (payment of taxes, etc.), there is a vast region as yet almost unexplored by the moral philosopher.

As extreme examples of state-absolutism we may take some acts of belligerency, since, even if such acts cease at the outbreak of peace, the attitude which makes them possible will remain. Can the state command, for any purpose whatever, the murder in cold blood of women and children? Can it command the devastation of a country? And if the onus of answering these questions seems to rest only with one school, what are we to say of the use of modern explosives? Can the state command the use of *any* poisons? Can the state, in a case of extreme necessity, command retaliation to *any* act however abhorrent to the normal civilised man? The range of such questions is obvious. They may be infinitely multiplied and so long as there is no body of men or no institution strong enough to say

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"these are the limits of your obedience to the state"—so long will those who deify the state excuse every act done by command of the government and justify every governmental command, however extreme. An attitude is thus formed of respectful adoration which is the only bulwark of despotism. On that attitude depends the misuse of power for the suppression of weaker peoples. And all despotism, of course, is maintained on the ground that it is good of the governed as that good is understood by the despot. Thus moral judgment is taken from the citizens by the government.

The moral issue is not a mere repetition of the old problem of the rights of the individual against the state. We have lived down the controversy between the Individualists and the Idealists of the nineteenth century. We take it for granted that "The State" whatever that means, cannot be simply the "hindrance of hindrances": the ideal of government is not, as the extreme Individualists said, the abolition of government. There are no "rights" of the individual against the state. But neither are there any "rights" of the state against the individuals, as the Idealists held. To express the problem in that way is to put fiction to fight fiction: the result may be philosophy but it has hardly any importance in real life.

The state is an independent institution for the attainment of a common political good. The good is the good of individuals; that it is common makes no difference to the distinction between the individuals who seek it. For that good, in maintenance of that institution, some actions are necessary in some circumstances some in others. Thus in peace the actions necessary for maintaining the state are different from those necessary in time of war. But both in peace and in war the actions necessary for maintaining the state are to be valued by reference to the value of the institution itself. Is it morally right to act in this way for this purpose? That is the problem. The answer depends upon our understanding of the purpose for which the state exists: not individual against state, nor state against

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individual, but the nature of the purpose for which the state exists—that we must decide.

Now this problem is obscured by state-absolutism. The purpose for which the state exists has not been clearly defined, and for the majority of men the state seems to mean everything which makes civilised life possible. Unfortunately the word "state" is obscure. It is used as a translation of πόλις and of "civitas," and its present use is derived from the phrase "status reipublicæ." But we do not mean by "state" what the Greeks meant by πόλις nor what the Romans meant by "civitas," nor what the Renaissance meant by "status reipublicæ," I am speaking English, not philosophy. Of course philosophers mean all those things by "State"; and the Absolute only knows how much more they mean. But in fact the state is not any longer an all-inclusive institution. It does not exist for the undifferentiated "good life" of Plato and Aristotle. Those dear old gentlemen are dead, and the πόλις is their grave. The state is not a church, as the Renaissance imagined. Even old Hobbes is dead and his "mortal God" with him. He knew it was mortal.

Speaking English, I say that the state is one of many institutions, admirable, slightly ineffective even for the partial purpose for which it exists, but not sovereign over all others and certainly not the sole bulwark of the civilised life. The purpose for which it exists is political; that is to say (again I speak English, for Greek "politics" is no more) it exists for the maintenance and development of order and liberty. It does not exist for flute-playing (*vide* Aristotle), nor for man-breeding (*vide* Plato), nor for frightening everyone out of his wits (*vide* Hobbes). A political purpose is not a religious, nor an economic, nor a cultural purpose. It is a moral purpose, but not the only nor the supreme moral purpose. Other institutions supply art, science, economic or religious needs; some of these other institutions pass over the frontiers of states, so that there is what Maitland called a "cross-organization." One may be a citizen of a state and a fellow-member in a church

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or trade-union or a scientific society with citizens of many other states. Civilised life for a modern man is dependent at least as much upon his other institutions as upon his state; and when one says (in English) "citizen," one does not include the other institutions. A citizen may have more intellectual or economic or religious common interests "abroad" than he has with his fellow-citizens.

This may be regrettable, but it is fact. Things were simpler once. Your allegiance to your πόλις included all others. To say "citizen" was to say civilised man. And if you object to the moral complexities which arise out of cross-allegiance, you attempt to confine all a man's interests within the range of common citizenship. But that is not the present situation, in spite of obsolete political practice and philosophical theory. The state is only one of many institutions to which we owe the civilised life.

Now the state, being admirable and partly effective, although by no means heavenly, is worth defending and developing. But as we are not hoplites, we need not imagine that in defending the state we are defending the whole of civilised life. That will give pause to our enthusiasm, no doubt; and yet the majority of men will feel that, however limited the purpose for which the state exists, if it is attacked, it must be defended. How much defence and how much preparation for defence are made will depend both upon the value of the thing defended and on the risk of its being attacked. But it is strange that no other institution except the state ever expects to be attacked: universities are not armed nor even churches. As a Lutheran I do not expect to be assailed forcibly by Roman Catholics; but as a citizen I do expect other citizens to attack me. A most mysterious institution this "state" must be!

We say, then, that if the whole of civilised life depended upon the state, the state might be worth much more sacrifice than if it only supplies the empty "concept" of civilisation, void of content, which we call liberty and order. And this is not to despise or undervalue the state. Perhaps

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we could not have music or wealth, or good company or good dinners without the state—that is, without some form of law and government. Perhaps even this particular arrangement of "goods" could only be attained by this particular form of law and government. That would be a ground for defending if necessary by force (1) "the" state against barbarism or (2) this state against that. But in neither case do we suppose that we are defending more than the bare condition of civilised life. One could not have civilisation without some state, but no particular state seems to be necessary: and although one may be really better than the other, no state *is* civilised life. Invariable concomitance does not prove identity: and yet we may defend one state in the belief that thus we are defending some at least of the other institutions to which we belong.

Granting that the state exists only for one among many "goods," is any and every act justifiable in defence of it on the ground that we could not have any of these goods if we lost one? In concrete terms—we might lose our literature in losing our political independence; how much therefore may we do in order to save the one for the sake of the other? Clearly life is unendurable morally which is not the good life in some form. A man may well prefer to risk death in order to avoid slavery. But this section of moral problems has never been explored fully; for how far are we to go? Is it worth while to go to all extremities to save political liberty? Perhaps. And is it worth while to go to such extremities to secure political predominance or a greater "national income" or "prestige" or the "balance of power"? It is difficult to estimate the moral gain or even the moral necessity in these so highly as to warrant extreme action. Yet the state makes no distinction: it calls for supreme sacrifice for all of these—and the call is continually made in every state as though the State were what the πόλις once was or the civitas or even the "regnum" of the Renaissance.

Finally what kind of service is demanded as moral by the state? For its sake men are supposed to die—the indi-

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viduals for the sake of the institution. We are not called upon to die for our church or our club or our university or our trade-union, and yet we receive very great benefits from these; but for the state only. And perhaps there is no fundamental moral objection. We shall not say that the state has no right over the individual life, as no other institution has, for the contempt of death is morally valuable, but not the contempt of *the death of others*. "There is no passion in the heart of man so weak but it doth mate and master the fear of death," but to lose the sense of the death of others is morally degrading. We ask, then, whether even if the state has a right to command you to risk death or to die, it has any right to command you to kill or to make preparations to kill. Again we do not assert that killing men and, incidentally though more subtly, women and children, cannot be commanded by the state; we do not say that this command passes beyond the limits of state power for state purposes. We ask only whether there is any such limit and where, if there is, the line is to be drawn. We find it difficult to see why it is moral to use high explosives and not poisoned weapons, and why it is moral to spy, to cheat and to deceive for the sake of preserving intact one institution among many. And if it is not moral, why do none of the citizens of all the civilised states which practise these "arts" ever refuse to receive the benefits which flow from such immorality? If the whole of civilisation depended upon one institution it would still be unjustifiable to lie and to cheat for its preservation, but the case becomes simply ludicrous when one institution only among very many demands physical force and the savage practices of deceit, called the art of war, for its maintenance and development.

All these and kindred moral problems I do not propose to solve; my task is ended if I have left in any way the sense of "so much for so little." Indeed we live among ghosts, and the most pernicious of them all is concealed in that word "state." Because there once was a πόλις or a "civitas" or a "sovereign state," therefore still men believe that the

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"state" must be armed. It is sheer nonsense. There is no political institution at present in existence, except perhaps in the unexplored parts of Africa, whose members depend for the whole of "the good life" upon it. There is no state which is absolute or all-inclusive or sovereign or isolated. The whole situation has changed, while the philosophers have been sleeping over Plato and Bodin, and the diplomatists have been juggling with dead bones. When the world wakes up, war will end, but it may sleep and dream a half-remembered muddle of the past for many hundred years still. Mankind does not suffer from insomnia. Its most sacred objects are ghosts and dreams. The very word "statesman" is a joke, as it is a joke to put men up before shell-fire and call the results "casualties." And we know how feeble the jokes are that we have heard in dreams. When we are awake and do not any longer model the present on the past, then at last peace will "break out," not as an occasional pause for preparing more "civilised" war, but as the dawn breaks. For there never yet has been peace. And the soothing cadences of philosophy have done much to keep men dreaming still of a "state" which no longer exists and of the warlike preparations which it once involved. Every other institution has contrived a method of arranging its conflicts of interest without recourse to arms. The state alone is armed.

The nature of the institutions which we now use for the complex purposes of the civilised life needs a new treatment. We must shut our Plato and our Bodin and above all our Hegel: for, of all the nonsense that ever pretended to be a description of fact, the Hegelian state is the worst. We do not deny that it is pretty or noble or inspiring or anything else that is poetic; some would hold that, even allowing poetic license, it is bad poetry, but it certainly has no bearing upon the political institutions of the twentieth century. And whether or not it is a description of the German state-system of the early nineteenth century, it has even less bearing upon the modern state than has Plato's conception of a πόλις. In the process of evolution, we are told, man appeared after the anthropoid ape; and, I

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imagine, the earliest philosophers attempted to explain man in the terms of the anthropoid ape. Something of the same kind occurs when the modern state is described in Hegelian or even Platonic terms. We shall only learn the true value of Plato and Hegel when we go to them *after* having perceived facts for ourselves. And what sort of facts shall we see? In that department of morality which is called political we shall find that there is a great differentiation of function which now makes the political institution quite distinct from the economic or the religious or the cultural institution, and further we shall see that no political institution whatever can be understood by internal analysis. The modern state is what it is because of its connections with other states. Plato's state is isolated in a world of barbarism, Aristotle's is "self-sufficing," Hegel's puts "foreign policy" in an appendix. Now there is no isolated state.

The practical moral interest is this; men are fighting for the existence of the ancient state, and by their fighting they are doing what they can to destroy the modern state. This is a "professor's" war. The learned have said "this is *the* state." And when peace comes, the learned will make the attitude which heaps up more armaments. Why? Because of the nature of the state—that is, the nature of the state which no longer exists!

All the moral claims of government are based upon a theory which is obsolete. We do not say that government has fewer claims; it may have more, but they are utterly different from what they were even in the nineteenth century. Even citizenship does not mean the same thing. All the difficulty in discovering what the limits are to the first commands of the state are due to attempts to make the modern state into the πόλις or the Renaissance "sovereign." And until we have remodelled our whole political conception we shall continue to feel that at any moment "the state" might demand of us actions which no civilised man could do.

C. DELISLE BURNS.

LONDON, ENGLAND.

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ROSCOE POUND.

IT HAS been a common complaint on the part of analytical jurists that the philosophical jurist is wont to import ethical ideas into legal science which, in that environment, breed far-reaching confusions. How far these complaints are well grounded, and why, has been considered in another place.* In the present connection it is more germane to point out that importation of a confused juristic conception and ambiguous juristic term into ethical science has bred quite as many far-reaching confusions in that domain. Law held the hegemony in the field of learning when ethical and political and social science were formative as certainly as the natural sciences dominate our thinking to-day. As to-day we resort to figures of speech drawn from organic creation and summon biological analogies to our aid in all fundamental difficulties, so men formerly resorted to juristic figures of speech and sought for legal analogies. No legal institution seemed more apt for the purpose than the legal right. But the word "right" is a blind guide in its own proper field. Outside of that field, it has made for loose thinking and has actively stimulated misunderstanding and confusion at least since the seventeenth century. It is task enough to deal with this much-enduring word of many turns upon its own ground. Let us see, therefore, what it means when, supposedly, it is used strictly.[2]

As a noun, the word "right" is used in the law books in at least five senses. (1) Frequently it is used in the sense of interest—a "subjectively perceived relation derived from necessity, between the person feeling the necessity and an object; that is, the object for which the necessity exists and is felt and through which, by use or consumption,

* The references will be found at the end of the article.

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actually or probably, it will or may be satisfied in whole or in part."[3] So used, it may mean an interest which one thinks should be recognized and secured by law, as in most discussions of natural rights, or an interest as recognized and delimited for the purpose of securing it through the legal order.

(2) Again the term "right" is used to designate the chief means which the law adopts in order to secure interests, namely, a recognition in persons, or a conferring upon persons, of certain capacities of influencing the action of others. The courts give effect to these capacities of influence by protecting those in whom they are recognized or upon whom they are conferred in the exercise of them, or by enforcing them specifically against those whom the law holds subject to such influence, or by vindicating them by some form of redress when they are interfered with. No doubt this sense has a certain relation to the foregoing. It is possible to define each conception in terms of "claim." The general claim or demand[4] in the first use of the word "right" has now become a recognized claim to acts or forbearances by another or by all others, in order to make the interest effective.[5] Putting it in this way, the claim may be one recognized and potentially effective legally, through the force of politically-organized society exerted to maintain the interest as the law has delimited it, or it may be one recognized and made effective morally, to maintain the interest as delimited by the moral sense of the community. I shall endeavor to show presently how this definition of "right" in the second sense in terms of "claim" grew out of Roman legal procedure, and hence to show why Anglo-American jurists are warranted in speaking instead of a capacity of influencing others which is recognized or conferred in order to secure an interest. But in either view two points are to be noted. In the first place, as Merkel puts it, the idea in the second use of "right" differs from that in the first use as the fortification from the protected land.[6] Secondly, rights, in the second sense of the term, are clearly set off from those

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legal institutions which are called "rights" in the other senses in which the word is used, in that a right in this sense always has as a correlative a legal duty. It is a capacity of exacting or claim to exact some act or forbearance, with a corresponding legal subjecting of all persons or of some particular person to that exaction; a legal treatment of them as bound to accede thereto.

At this point a digression must be made. The term "duty" is used by jurists in more than one sense.[7] (a) It is used to denote the correlative of a legal right in the sense of that term now under consideration.[8] (b) It is used also to denote what Austin calls "absolute duties," imposed upon individuals to secure social interests and vindicated, not by the judicial assertion of a correlative private right (sense No. 2), but by a criminal prosecution intended to deter others, to meet the social demand for punishment of the offender and to reclaim the offender from his anti-social tendencies.[9] We have been wont to speak of a "right" of the state in this connection.[10] But that "right" is really dragged in by the heels to save the proposition that every duty must have a correlative right. Where the state as a corporation has interests of substance—*e.g.*, holds property for public purposes, takes bonds for the faithful conduct of its officers, has liens on property for taxes, loans its funds to depositary private banks—here it has private rights (sense No. 2) given by law to secure these public interests. No such rights are correlative to a duty not to be cruel to animals. The interest secured in this case is a general social interest in public morals, and the legal system secures it, not by conferring any right (in sense No. 2) but by imposing an absolute duty of humanity to animals, enforced by penal actions or criminal prosecutions. (c) The word "duty" is also used, for another legal institution of great importance, namely, a legal situation where, as a consequence of his calling or as a consequence of a course of conduct which does not measure up to the standard imposed by the law in order to maintain the social interest in the general security, the

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individual is subjected to a possibility of being under an obligation of action towards someone, without voluntarily assuming it [11] or of being held to make reparation to someone, if injury results, where, if none results, unless a prosecution will lie to secure the social interest, no legal consequences will follow.[12]

Summing up this second use of the term "right," we may say that so used it signifies one of the legal institutions whereby "rights" in the first sense are secured, and that it is distinguished from the other legal institutions which secure "rights" in the first sense in that there is always a correlative legal duty.

(3) Still another sense of "right" is a capacity of creating, divesting, or altering "rights" in the second sense, and so of creating or altering duties. Rights in this sense, or powers,[13] as we are now coming to call them, like "rights" in the second sense, are legal institutions devised to give effect to "rights" in the first sense. In order to secure certain individual interests, the law confers directly or recognizes, as the case may be, certain capacities of altering the existing legal situation. Examples of powers conferred by the law directly are the *ius disponendi* of an owner, the power of making a will, the power (in Anglo-American law) to break a contract and substitute a duty of paying damages for the pre-existing duty of performing the promise, the power to create a new title by sale in market overt, the power of the assignee (at common law) to sue in the name of the assignor, the power of a grantor in an unrecorded conveyance (under American recording acts) to convey to a bona fide purchaser what he no longer has to give, so that if the purchaser records he will obtain a new title to the estate which the grantor appeared to have and purported to dispose of. Examples of powers conferred by one person upon another and recognized by law, are powers of appointment of estates in the law of real property (*i.e.*, powers given by a testator or settlor to some person who does not own an interest in property, to determine upon whom that interest shall devolve, as in

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a gift to John Doe for life, remainder to such of Doe's nephews as he shall appoint by deed or will); the power of an agent to bind his principal, conferred by appointing the agent; directions to a trustee to make some disposition which does not involve a beneficial interest in any human being, so that the trustee, although no one can compel him to make such disposition, may do so with impunity by virtue of the power, if he chooses.[14]

An example of the need for discrimination in the use of the term "right" is afforded in the law of agency. Agency is a relation growing out of entrusting a person with a power of representation. The principal confers on the agent and the law recognizes a power of binding the principal by acts within the scope of the agent's authority. This is recognized by law in order to secure the principal's individual interests. But the law also, against the principal's individual interest, confers directly upon all agents a certain power of binding their principals (as between the principal and third persons) by acts within the apparent scope of their authority. That is, an agent is given a power of creating rights (sense No. 2) in others against his principal and of creating corresponding duties in his principal, in order to give effect to the social interest in the security of transactions and the free course of trade. It is wrong for the agent to exercise this power. We say that he "has no right to do it" as against his principal, and is liable to his principal if he does. Still he may do so and in that event the principal will be bound. This is as much a "right" as the so-called "right to break a contract of personal service," where specific performance cannot be coerced—and no more.

Again, whereas a right in the second sense has a legal duty as its correlative, there is no significant legal institution correlative to a power. At this point a second digression becomes expedient.

A useful method in getting at some of the conceptions which have been confused and are still confused too often under the term "right" is to work out the correlative and

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the opposite respectively of each idea. Salmond was the first to employ this method,[15] but it has been carried out thoroughly and tested with reference to a wealth of judicial material by Professor Hohfeld in the paper heretofore cited.[16] In the case of a right in the second sense above set forth, he points out that the opposite is "no right" and the correlative "duty." In the case of a right in the fourth sense, to be discussed presently, he points out that the opposite is "duty" and the correlative is "no right." But in the case of a right in the third sense, or a power, as it is better to call it, this method gives us no positive result. It does no more than confirm the conclusion, reached on other grounds, that we have here an institution significantly different from rights in the second or the fourth sense and yet, like them, a means of securing rights in the first sense. Professor Hohfeld has, indeed, ingeniously worked out an opposite, which he calls "disability," and a correlative, which he calls "liability." But these conceptions are quite without independent jural significance, and each name is available and in use for other and important legal conceptions. The opposite of power—of the capacity of creating legal consequences, or, as Gareis puts it, of altering the sphere of rights or the jural relations of persons[17]—is the absence or want of capacity to create such consequences. This may, it is true, be involved in a wider incapacity or disability. It may be that the natural entity in question is not a legal entity, as formerly in the case of a slave. Or it may be that a legal entity, with capacity for rights in the second sense, is subject to a total or partial incapacity for legal transactions, and so may not exercise powers that involve such acts. Yet there are cases where one who labors under a general incapacity for legal transactions may have a power, notwithstanding his general disability, as in the case of an infant agent.[18] Again, it may be that there is a mere absence of capacity to alter the legal situation because the situation is one which may only be altered by virtue of a power conferred voluntarily by some person entitled and no such power has been given. Here again

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the so-called disability is quite without jural significance. One may admit, it is true, that in each case there is an *inability* to create a certain type of legal consequences. But this is quite different from the condition of general want of capacity for legally effective action which goes by the name of disability and plays so important a rôle in the law of persons. So also with respect to the correlative. Professor Hohfeld calls this by the name of "liability," that is a situation where one is subject to have a relation in which he is interested controlled by another. Thus, one who has appointed an agent may find himself bound by what the latter has done. A promisee (at common law) may find his claim to performance changed into a cause of action for damages by a breach of the contract. An offeror may find himself bound by contract through acceptance of his offer. An offeree may find his power of acceptance cut off by revocation. The owner of a stolen chattel (in England) may find himself under a duty of respecting the control of a purchaser in market overt, and may find his claim against the whole world cut off. The grantee in an unrecorded deed may find his legal relation to the property terminated in an instant by prior record of a conveyance to a bona fide purchaser. But this subjection to the operation of a power is not a jural conception of any significance. The significant conception is that already considered in connection with the third sense of the term "duty." This does not detract from the great merit of Professor Hohfeld's discussion of the idea of a legal power. But it requires us to emphasize the distinction between a right in the second sense, with the significant juristic conception of legal duty as its correlative, and a right in the third sense, or a power, where there is no correlative institution which plays any part in the legal system.

(4) Yet another use of the term "right" is to signify a condition of legal immunity from liability for what otherwise would be a breach of duty. Sometimes, as in the case of self-defense, there may be an absence of legal restric-

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tion upon exercise of one's natural powers—a negative conception for which the English books have used the term "liberty."[19] But this "liberty" seems to be merely a negative way of looking at a positive *facultas agendi*, which, as a matter of course, may be exercised as an exercise of one's personality, except as the law may limit it in order to secure some other interest.[20] The more important legal institution is a means of securing interests (usually but not always, upon a balancing of conflicting interests) by positive exception of a situation from the operation of the ordinary legal rule. It seems convenient to use the term "privilege" for this conception.[21] Using the term in this way, privileges may be conferred directly by the law because of some social or public interest which may be maintained best by exemption of certain persons or certain classes of acts or acts on certain occasions from the operation of general rules of law. For example, what would ordinarily be actionable as a libel because of its effect upon the reputation of the subject of the writing may be privileged and hence involve no liability when written in honest criticism of the official acts of a public officer, since the public interest in free criticism in such a case outweighs the individual interest. Again, a communication which would ordinarily be a wrong because defamatory, may be privileged because of a social interest in such communications, as in case of answers to inquiries by surety companies or inquiries as to the character of a servant. Again, privileges may be conferred directly by law upon a balancing of individual interests, as in case of those forms of self-redress which the law still permits. Thus recaption of chattels or distress of cattle damage feasant is allowed upon a balance of interests in certain cases to secure the interests of substance of an owner whose property rights are invaded, because in those cases the ordinary rules do not adequately secure them. But without any balancing of interests the law may recognize a privilege conferred by an individual in order to secure individual interests of substance, as in the case of a license.

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Under the name of *beneficium* the conception denoted by this fourth sense of the word "right" plays an important part in Roman law. For example, co-debtors by stipulation were each liable for the whole; but if there was the *beneficium diuisionis* each was liable only for his share. Again, a debtor, as a general rule, was bound to answer for the debt with all his property until the debt was satisfied. But debtors in certain relations were allowed the *beneficium competentiæ*, the privilege of answering only so far as they could do so and yet retain a competence. Here manifestly the *beneficium* was set up to secure a social interest in piety and good morals on a balancing of that interest with the individual interest of the creditor.[22] While we sometimes call instances of this legal institution by the name of privilege, as in the typical cases of the privilege against self-incrimination in the law of evidence and privileged communications in the law of defamation, they are usually spoken of as "rights." A good example of this may be seen in the so-called "right of deviation," where the highway is impassable. Here, on a balancing of the individual interest of the owner and of the social interest in freedom of travel and communication, A, who would ordinarily be a trespasser in so doing, is permitted by law to make his way around the obstruction or the impassable spot in the highway by going over B's land. But for the privilege (or so-called right) of deviation, B, in Windscheid's way of putting it, can enforce a command of the legal order that A keep off. Because of the privilege, B has no right (in the second sense), no claim, such as he would ordinarily have, to the effect that A keep off, and A is not under a duty to keep off as he ordinarily would be. Thus, applying the method of correlatives and opposites, to which reference was made above, we see that this sort of so-called right has duty (in the first of the senses considered above) not for its correlative, but for its opposite, while its correlative, the mere absence of a right (in the second sense) is not a significant legal institution.

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(5) Right, as a noun, is also used in a purely ethical sense of that which is just, so that, even in legal speech, we not infrequently say one has "a right" to this or that because, without any definite claim, we feel that on a balance of equities we should like to see him have it.

(6) *Ius*, in Latin, and its equivalents in the languages of Continental Europe, have the further ambiguity of also meaning "law" in general, compelling the German jurists to speak of "objective right" and "subjective right." The one, that which is right looked at objectively, is a complex conception of that which is right plus law in general as a formulation of what is right. The other, that which is right looked at from the standpoint of the individual, is a no less complex conception, or rather bundle of conceptions, which we express by the term "a right."[23] How many diverse legal institutions are included in that bundle is well illustrated in the conventional analysis of "the right of ownership." The civilians tell us, and their statement is copied into the books in English, that *dominium* includes (1) *ius possidendi*, (2) *ius utendi*, (3) *ius fruendi*, (4) *ius abutendi*, (5) *ius disponendi*, and (6) *ius prohibendi*.[24] What this means is not that one "right" involves six other constituent "rights." The matter is far more complex. The interest of substance of the owner, in itself something which we think ought to be secured, is given effect by a variety of legal institutions: (1) A claim against the whole world to have possession of the thing owned, with a general correlative duty in all others; (2) a claim against the whole world to make use of the thing owned, with a correlative duty as before, coupled with an absence of restraint upon the natural powers of action of the owner, maintained by law to secure his interests of personality, so long as, confining himself to use of the thing owned, he does not compel the law to balance any other interest therewith; (3) a like complex of a claim to enjoy the thing owned with an absence of restraint upon his natural powers of action while he is enjoying the thing owned; (4) an absence

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of restraint of the same sort, so long as his abuse of the thing owned does not conflict with any important social interest; (5) a capacity of altering the legal situation by substituting another in his place in this complex; (6) a claim to exclude all others from the thing owned, with a correlative legal duty imposed upon everyone. The use of one word for this complex and for all its constituents has made the term "right" quite useless for purposes of critical reasoning. In jurisprudence, interest, legal right, power, and privilege, are coming into use for the first four of the five meanings of "a right" set forth above and those who use juridical analogies in other fields would do well to make similar discriminations.

But, it may be asked, how did one word come to be so overworked? The answer is that the several legal institutions which we call by that word have developed gradually in relatively modern times, while the interests which those institutions secure have attracted chief attention and furnished the theory for both the agencies of security and the things secured.

Modern juristic terminology begins in the Roman law. But Roman legal terminology has its origin in the stage of strict law[25] when remedies were the chief institution. One was given an action to obtain a certain remedy. Rights are a later generalization, even if they are logically implied in the remedy. Hence, the classical Roman books deal with rights only as it were subconsciously.[26] The word which serves for all purposes (*ius*) often means the legal position of a person which gives him legal standing or makes transactions and remedies available to him, as in the expression *ius Latii*.[27] Sometimes it means "power," as in the case of *ius disponendi* already considered. Even in the cases that come nearest to the meaning "a right," namely, the texts dealing with what is now called "abusive exercise of rights,"[28] the idea is more nearly one of a natural power of action which is unrestrained within the limits of a recognized interest. So far as conscious analysis goes, rights are institutions of the maturity of law. We get

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little help here from the classical texts which speak from the stage of equity or natural law, in which duty, as the moral conception, receives the chief emphasis.[29]

In the fourteenth century, the commentators began to deduce right *in rem* and right *in personam* from the Roman *actio in rem* and *actio in personam*. But as soon as this had fairly begun to raise the question of legal rights, as institutions distinct from remedies and anterior to them, a new era of equity or natural law supervened, in which emphasis was put rather on the ethical idea of duty.[30] Accordingly the moral claim to security for interests as a moral institution, which was the occasion of duty, began to attract attention, and we get our first definitions of a right under the influence of the confusion or identification of law and morals. The formula which has had the widest currency is to be found in Grotius, who defines a right as a moral quality of a person which makes it just or right for him either to possess certain things or to do certain actions.[31] This idea of a right as a *qualitas moralis personæ* has persisted in American professional thinking. In the form of right as a "moral power," it is to be found generally in the formulas of nineteenth-century philosophical jurists.[32] A modern version is given by Salmond and in his latest book by Clark. In his earlier book, Salmond deduced rights in particular from right (*i.e.*, what is just) in general by Bentham's principle of utility.[33] Thus "utility" demonstrates those "qualities of a person" which it is in accord with right that we should secure.[34] Clark's theory shows the influence of the social-philosophical jurists. He starts with "moral rights and duties protected and enforced by . . . 'the common conscience of a human society.'" These, he says, are natural rights, and these, given the legal sanction of interference by the state, in addition to the natural sanction of "common disapproval of interference with that individual right or . . . a common feeling of duty to respect it," are legal rights.[35] Perhaps one may restate the analysis thus: (1) An interest, the claim of a human being to this or that; (2) a recognition

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of this interest by the common conscience of society, giving rise to a natural right,—giving a moral claim in addition to the *de facto* claim to be secured; (3) a recognition of this natural right by the state in actually securing it. There is much here to think about and this way of putting it may perhaps bridge the gap between interests and legal rights more to the satisfaction of many who are offended at the enumeration and weighing of interests with a view to securing as many and sacrificing as few as possible.[36] But if one were more sure of the common conscience of society, he would have more confidence in it. Administration of justice involves a great deal as to which it is very hard to find such a common conscience and the law has continually to balance interests where the general conscience is quite helpless.

In contrast with the philosophical view that makes legal rights depend on moral rights, we have the Austinian analysis which makes legal rights depend on duties, which are imposed by commands of the state.[37] This is a corollary of Austin's doctrine as to the nature of law. But its significance for our purpose is in the idea of a right as a power or capacity of exacting acts or forbearances; a power or capacity conferred by the state through the duties it imposes by its commands. The state does not create the interest. But the means of securing the interest, namely, a capacity of exaction of certain conduct from others through the force of politically-organized society, is the creature of the state. In thus distinguishing the means of securing from the thing secured, Austin took a great step forward. Jhering, however, presently started a new fashion in the analysis of a right which turned attention once more to the thing secured. His working out of the idea of the interests which the legal system secures is epoch-making in jurisprudence. But in this particular connection, pointing out that the law balances interests and chooses from among them, securing some but not all, and defining those which the law secures as legal rights,[38] retarded the distinction which had to be made eventually,

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between the interest, the interest legally recognized and delimited, on the one hand, and the several legal institutions by which it is made effective, on the other hand.

Later an idea of a right as a legal relation has grown up. It got currency from Ahrens,[39] but may be found frequently in the formulas of social-philosophical jurists to-day,[40] and has been worked out thoroughly by Wigmore.[41]

Since Jhering the distinction between the *de facto* interest and the legally-recognized interest has been admitted universally. But we still have four different ideas in current definitions of a right, namely, (1) the idea of a right as a moral power or capacity in a person, (2) the idea of a right as a power or capacity given a person by law, in each case for the purpose of securing interests, (3) the idea of a right as a secured interest, and (4) the idea of a right as a relation. Looking at these more critically, they reduce to three: Right as authority or capacity, for it is desirable to use "power" in a technical sense; right as interest, and right as relation. Let us examine these more in detail.

(1) The idea of a right as an authority or capacity conferred by law goes back in some sense to Grotius. The eighteenth-century philosophical jurists thought of a right as a capacity or authority of demanding that others do or forbear which inhered in each of us on unanswerable moral grounds.[42] Austin took this idea over and made out of it an analytical theory of a right as a capacity conferred by law. But the German writers on the Pandects, from whom, as is well known, Austin got much of his inspiration, had been doing the same thing. Hence recent English and recent German theories have not been far apart. Thus Dernburg, after a philosophical definition of a right as "the share in the advantages of life which the general will recognizes as due to a person and guarantees to him" —thus defining a right as the delimited and guaranteed interest—goes on to say that out of this delimitation and guarantee there grows a claim (*Anspruch*). He defines

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this *Anspruch* as "the present power to influence the action or forbearance of another." [43] This last is not substantially different from the standard English analytical formula.[44]

A closer examination of the term *Anspruch* will make the matter more clear. The ambiguity of *Recht* and the obvious desirability of distinguishing the interest secured from the legal right or legal power by which it is secured, have made *Anspruch* a very popular word in recent German juristic literature. It has an ambiguity of its own, however, as it is used in two senses: (a) A legal right in the sense of the English analytical jurists (sense No. 2 above), and (b) a cause of action, the basis of a complaint addressed to a tribunal. This use of the word for legal right as the word for cause of action seems strange to us but is perfectly natural in a Roman-law country. In our procedure we put the stress upon the wrong done because our procedure developed for the most part around or on the analogy of the action of trespass, since the king's courts got jurisdiction through breach of the king's peace, which was a wrong. But Roman procedure lays stress on the right infringed, not on the wrong that infringes it. It grew around the old formula of *legis actio*, in which the plaintiff set up the right he asserted. On this model, in the formulary procedure, the *intentio* (statement of plaintiff's claim) set up his right in general terms, not the breach as with us. Hence it is natural for the German, trained in the Roman procedure, to fall into an ambiguous use of *Anspruch* to mean both the legal right and the cause of action based on that right. Taking *Anspruch* in its meaning of legal right, Dernburg's analysis would be: (1) An interest, an extra-legal or natural institution; (2) the interest as delimited and secured by law, a compound of the natural and the civil; (3) the claim or *Anspruch* which is one of the means of securing the interest as delimited, a purely civil institution. This last is what the English analytical jurists call a legal right and they agree with him in speaking of it as a capacity of influencing the acts of others.

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Windscheid is substantially to the same effect and is even more in accord with Austin. He distinguishes two meanings of *subjektives Recht.* The first is the sense in which we speak of having a right to certain conduct or a certain act or forbearance on the part of others. In such cases, he says, the legal order, in view of some situation of fact, has issued a command, enjoining conduct of a certain sort and has put this command at the service of the person in whose interest the command was issued.[45] Where Austin speaks of the command of the state, Windscheid, a historical jurist, speaks of a command of the legal order—a command having its origin, not in the conscious will of the state, but in the subconscious development in experience of a principle of right, which has crystallized as it were in the legal order. Windscheid says that the legal order leaves it to the person entitled whether he will put into operation the means which the legal order provides against the one who infringes the command. Accordingly the will of the person entitled is controlling as regards the carrying out of the command issued by the legal order. As he puts it: "the legal order has promulgated the command in his interest; it has made its command his command; the right has become his right." That comes to saying that in this sense of the term "a right" (the second of those above noted) a duty is correlative to a right. There is a legal right and a legal duty, but the duty is a relative one. It is relative to a person whose interest is secured by the right. Thus he limits "a right" in this proper legal sense to cases where there is a correlative duty. It will have been seen that this is very like Austin. Austin would say, the state commands; this creates duties to obey; correlative to these situations of persons who are bound to act or forbear for one's benefit, are the capacities to exact the acts or forbearances which are legal rights. Windscheid says, the legal order recognizes and delimits interests; to secure them within the limits fixed, it imposes relative duties by its command; then it gives the individual whose interest is secured a capacity of enforcing the command, which is a legal right.

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Windscheid turns next to a second meaning of *subjektives Recht.* There is an example of this second meaning when we say that an owner has a right to alienate the thing owned or a creditor has a right to assign the claim or an offeror has a right to revoke the offer. Here, he says, the meaning is that the will of the person entitled is controlling with respect to the coming into existence of a right in the former sense or with respect to the termination or alteration of an existing right in the former sense. This is what we are coming to call a "power," and, indeed, German jurists have long called it by the equivalent *Befugniss.*[46] His first sense is what the English analytical jurists have called "legal right." The latter, as Windscheid puts it, is authority to use legal machinery to give effect to a command of the legal order for the securing of some interest; the former is a capacity to determine whether such a command shall exist. To use his words, in case of a power, "the legal order ascribes to the person entitled a controlling will, not for the enforcement but for the existence of a command of the legal order." He next tries to unite the two in one idea, and undertakes to frame a definition which will comprise both "kinds of rights in the subjective sense." His formula runs thus: "A right is a power of will (*Willensmacht*) or authority of will (*Willensherrschaft*) conceded by the legal order." In other words, in his analysis, for the purpose of securing interests, the legal order gives to the individual will (1) power to enforce, if it chooses, commands addressed to others by the legal order, and (2) authority to create, alter, or terminate situations to which such commands are annexed.

Three points in Windscheid's discussion are of special interest. In the first place, he does not notice and set off the conception designated above as the fourth sense of "a right," or better "a privilege." As has been seen such a conception plays an important part in Roman law in the case of the *beneficium diuisionis, beneficium competentiæ,* etc. But it happened that these privileges got a word of their own in Latin. As the Romans did not speak of a *ius*

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diuisionis it has not been necessary in modern law to set off a meaning of *Recht* for such cases, nor has anyone thought it necessary to work out an all-embracing conception to include this along with delimited interest, legal right and power. Does not this throw some light upon the utility of such attempts with respect to our word "a right," where such terms as "right of deviation" have led many to feel that legal right, power and privilege must be summed up or rolled up in some one general idea? In the second place Windscheid's analysis is obviously influenced by the ideas of the nineteenth-century metaphysical jurists, accepted by him in common with the historical jurists, especially the idea of referring everything to the will as the fundamental datum. Hence he thinks of a legal right as a capacity in the individual will to enforce a command in its interest and of a power as a capacity in the individual will to create situations or to terminate or alter them so that commands will attach, which this or some other individual will may enforce. The third and most important point is his view of the nature of a power; his conception of the contrast between the capacity to bring about enforcement of commands at will and the capacity to produce at will situations to which enforceable commands are annexed by law.

Of the writers of the present generation, Cosack, in particular, emphasizes the distinction between legal right and power calling the latter *Rechtsmacht.* He starts with the notion of the legal order as an ordering of mankind through rules. One way, he says, in which the legal order achieves this ordering is to guarantee a special authority to individuals. Such an authority guaranteed by a rule of the civil law, is a private legal right. So his formula runs: "A right is an authority guaranteed by law to the person entitled."

(2) We come now to right defined as interest. The formulas hitherto considered have defined one of the means by which the legal order secures interests which it has recognized and has delimited for legal purposes. The

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"natural rights" which played so great a part in the jurisprudence and public law of the past were interests. Hence a theory of rights as interests but connected modern juristic thinking with the first use of the term right in modern juristic writing. Jhering is the classical exponent of this mode of looking at a legal right. As has been seen, he defines it as an interest protected by law.[47] In other words, there is: (a) The natural right, the interest, quite apart from law, which we think ought to be secured; (b) the legal right, the interest which the law has defined and limited and given its sanction within those limits. Clearly he is not defining the same thing as the authors first considered. If Roman terminology may be used, one might say that there are: (a) The natural interest, the *de facto* claim independent of law, (b) the legal interest, the natural interest as recognized and delimited by law, and (c) the legal claim (*Anspruch*) by which the legal interest is made effective. It will be noted that I have omitted the word "right" entirely in this account of the matter, for it is more important that these ideas be kept distinct than to fix meanings to any particular word.

Perhaps Bierling has given the best analytical treatment of the idea of rights as recognized and delimited interests.[48] He says that the term "a right" has two meanings, one of which has two aspects, so that ultimately there are three meanings. He expresses the first meaning by the word *Anspruch* and gives as examples, the right not to be injured by others in one's honor, not to be injured in one's body, not to be disturbed in the use of particular property, or to have this or that performed by a particular person. These are what the English analytical jurists call legal rights. In this sense, he says, a right is a claim, which one may make against the world at large or against a particular individual, to which the law gives its sanction. His view, then, is this: The law recognizes an interest, delimits it, and in order to secure it, creates a legal claim to that extent. It is the original natural interest all the time. The law simply makes it a legal institution within the limits in which it is recognized. The moral claim is

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now a legal claim, also. This is ingenious and has much to recommend it from a philosophical standpoint. But the two legal institutions, the legal interest and the legal capacity to make the interest effective by calling in the state against others, seem to demand more differentiation than this analysis provides.[49]

Bierling designates what he calls the second meaning of "right" *Befugniss*. But this, he says, has two aspects. The first aspect he terms "simple legal permission" (*dürfen*). The content of this is purely negative. It is "the legally not forbidden." The second aspect he terms *können*. It is legal capacity to effect something, or, to use his words, "capacity in pursuance of certain provisions of the positive law, to produce determinate legal consequences through legal transactions." Obviously, this is what we have been calling legal power. The other aspect, however, is not exactly what we called privilege (right in the fourth sense above). That idea, as we have seen, for reasons growing out of the Roman law, did not go by the name of right and so did not get mixed up with legal rights and powers. The idea in Bierling's *dürfen* is rather that of an unrestrained natural power of action—the idea which English judges often express by the term "liberty."[50] Accordingly Bierling's analysis may be put summarily thus:

Right in the wider sense
- 1. *Anspruch*, claim—legal right.
- 2. *Befugniss*
  - (a) *dürfen*, natural power unrestrained —liberty.
  - (b) *können*, — legal power.

This is the best presentation of the matter, from the standpoint of the civil law of which I know. If *Anspruch* were defined as Windscheid defines it, little more could be said. Two points deserve special notice. First, where Windscheid speaks of power in terms of will, Bierling considers that it is a capacity to create legal consequences by legal transaction. Is this accurate? Is a breach of a contract which cannot be enforced specifically a legal

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transaction? And yet it turns the promisee's claim to performance into a claim for money reparation. Is not the true account of the matter this: A power may be exercised by legal transaction, *e.g.*, alienation, or by an act not intended immediately to have legal consequences, *e.g.*, cutting of wood by a tenant without impeachment of waste, transfer of a note to a bona fide purchaser, sale in market overt? In the last two cases there is a legal transaction between seller and buyer, but the power of cutting off rights of the third-party owner is not its object. Secondly, and more important, the second aspect of *Befugniss*, the idea which he expresses by *dürfen*, calls for examination. Is there one idea here, or are there two? Does this include such things as the "right of deviation," the privilege against self-crimination, the "right of fair comment," etc., so that we may divide Bierling's *dürfen* once more into (a) liberty (to find a name for the moment) as in the case of the *ius abutendi* and (b) privilege, as in the case of a license or a privileged communication? If there is a difference, it seems to be this: In the case of a privilege, something which involves aggression which infringes a secured interest of another, is privileged, so that the person who has the privilege is under no duty and no liability. In the case of a "liberty," something which does not immediately involve aggression and is an incident of a secured interest, for that reason involves immunity if there is incidental injury. But what is this more than saying that in each case there is no duty or liability? On the whole it does not seem that any useful distinction may be made.

(3) It remains to consider right defined as relation. Puntschart first worked this out fully in German,[51] but in view of the recent thorough development of the idea by Wigmore, his analysis need not be set forth. Kohler's theory, however, demands a moment's notice. He says that a right is a control by a certain person of a definite advantage of life. The legal order is primarily an ordering of these controls over advantages. The right is primarily a capacity to control some definite advantage of life more

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or less at one's pleasure. But this control is effected by the legal order's sanctioning and protecting a relation between (a) individual and object, (b) individual and other individuals.[52] The power of control here is put as the means of securing the recognized and delimited interest. This accords with the position of the analytical jurists. One may concede that the power involves a certain relation. But what is the significant jural institution? It seems more important to mark off the capacity of control and the correlative duty.

Wigmore, who has treated the theory of right as relation with characteristic thoroughness and analytical acumen, begins with what he styles *nexus*. He holds that *nexus* involves two elements, the person element and the interest. In the person element there are two persons: (1) The person by whom state force is demandable, and from his side the *nexus* is termed a right; (2) the person against whom state force is demandable, and from his side the *nexus* is termed duty. The second element, interest, is the "fact of human condition which state force aims to protect or cause to be realized." [53] Thus he puts right (the capacity of demanding state force to secure an interest), duty (subjection to liability of state force for the securing of an interest) and the interest for security whereof the right and the duty are set up and imposed, as elements of a legal relation—of what the Germans would call *subjektives Recht*. How far is it important to insist upon this wider conception, including interest, legal right, and duty—or, indeed, natural interest, legally limited interest, legal right, duty, power and privilege? Would anyone try to do this if it were not that most of these ideas have developed later than the words by which we have tried to express them and so "right" has been an all-inclusive word? It seems doubtful whether we gain much by trying to include all these things under some one word, since the thing secured and the legal institutions that secure it are not reducible to any significant general idea behind them all.[54]

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[1] The Scope and Purpose of Sociological Jurisprudence, 24 *Harvard Law Rev.* 604, 610.

[2] For modern discussions of legal rights reference may be made to: Hohfeld, Some Fundamental Conceptions as Applied in Judicial Reasoning, 23 *Yale Law Jour.* 16, 28; Salmond, *Jurisprudence*, secs. 70–74, 78–85; Gray, *Nature and Sources of the Law*, secs. 22–62; Wigmore, Summary of the Principles of Torts (*Cases on Torts*, vol. 2, appendix A) secs. 4–8; Korkunov, *General Theory of Law* (transl. by Hastings), secs. 27–29; Gareis, *Science of Law* (transl. by Kocourek) 31–35; Brown, *The Austinian Theory of Law*, 172 *et seq.*; Schuppe, *Begriff des subjektiven Rechts*, chap. 2; Bierling, *Kritik der juristischen Grundbegriffe*, II, 49–73; Dernburg, *Pandekten* (8 ed.) I, sec. 38; Windscheid, *Pandekten*, I, sec. 37; Kohler, *Lehrbuch des bürgerlichen Rechts*, I, secs. 44–46; Cosack, *Lehrbuch des deutschen bürgerlichen Rechts*, I, secs. 16–20.

[3] Gareis, *Enzyklopädie und Methodologie der Rechtswissenschaft* (3 ed.), sec. 5.

[4] See James, *The Will to Believe*, 195–206.

[5] This is expressed in Windscheid's much quoted phrase: "Das Recht ist sein Recht geworden."

[6] *Juristische Enzyklopädie* (2 ed.), sec. 159, note.

[7] As to legal duties, see Salmond, *Jurisprudence*, sec. 77; Gray, *Nature and Sources of the Law*, secs. 45, 46, 59–61; Korkunov, *General Theory of Law* (transl. by Hastings), sec. 29; Miller, *The Date of Jurisprudence*, chap. 3; Bierling, *Juristische Prinzipienlehre*, I, sec. 11.

[8] See Hohfeld, Some Fundamental Conceptions as Applied in Legal Reasoning, 23 *Yale Law Journ.* 16.

[9] Austin, *Jurisprudence* (4 ed.), Lects. 17, 22–26.

[10] Holland, *Jurisprudence*, chap. 7; Pollock, *First Book of Jurisprudence* (3 ed.), 57–61.

[11] Wyman, *Public Service Companies*, I, sec. 331.

[12] See Terry, *Leading Principles of Anglo-American Law*, secs. 108–112.

[13] On "powers," reference may be made to Salmond, *Jurisprudence*, sec. 76; Miller, *The Data of Jurisprudence*, 63–70; Kohler, *Lehrbuch des bürgerlichen Rechts*, I, sec. 48.

[14] For example, the direction to the trustee in the case of In re Dean, 21 Ch. D. 552, to use a certain portion of the trust estate in caring for the testator's dogs and horses during the remainder of their lives. There was no beneficiary of the trust here who could enforce the direction. But the trustee had a power which the law would allow him to carry out.

[15] *Jurisprudence*, chap. X and summary (4 ed. p. 196).

[16] Note 2, *supra*.

[17] *Science of Law* (transl. by Kocourek), sec. 4.

[18] It is significant to note how the courts put this. "An infant can exercise a power . . . where an intention appears that it should be exercisable during minority." In re Cardross, 7 Ch. Div. 728.

[19] Salmond, *Jurisprudence*, sec. 75.

[20] This is well put by Gareis, *Science of Law* (transl. by Kocourek), sec. 34, and note 2.

[21] See Professor Hohfeld's paper, *supra*, note 2; Salmond, *Jurisprudence*, sec. 75; Brown, *The Austinian Theory of Law*, 180–181 (note); Miller, *The Data of Jurisprudence*, 96–100; Bentham, *Works* (Bowring's Ed.) II, 217–218; Hearn, *Theory of Legal Duties and Rights*, 133–134.

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[22] See my paper, The End of Law as Developed in Legal Rules and Doctrines, 27 *Harvard Law Rev.* 195, 231.

[23] Schuppe, *Begriff des subjektiven Rechts*, chap. 2.

[24] Hearn, *Theory of Legal Duties and Rights*, chap. 10. Cf. Korkunov, *General Theory of Law* (transl. by Hastings), 215.

[25] See my paper, The End of Law as Developed in Legal Rules and Doctrines, 27 *Harvard Law Rev.* 195, 204.

[26] On Roman uses of *ius* see Puntschart, *Moderne Theorie des Privatrechts*, secs. 2–9, Cf. Maine, *Early Law and Custom*, 365; Bekker, *Pandekten*, I, 46.

[27] Gaius, I, sec. 95. Cf. *ius Italicum*, *Digest*, L. 15, 1.

[28] *E. g. Digest*, L. 17, 55.

[29] An attempt has been made to show that *omne ius* in Gaius, I, sec. 8 (Digest, I, 5, 1), should be translated "every right." Kelly, The Gaian Fragment, 6 *Ill. Law Rev.* 561. But the argument is based on the proposition that such a translation results in a more logical analysis, and presupposes the long juristic development from the twelfth century to the present. Absence of any word for "a right" in an advanced stage of legal development is no uncommon phenomenon. See the Russian juristic coinage in modern times, Korkunov, *General Theory of Law*, 212, and the significantly analogous coined word in modern Japan, Smith, The Japanese Code and the Family, 23 *Law Quart. Rev.* 43 and note 1.

[30] See my paper, The End of Law as Developed in Legal Rules and Doctrines, 27 *Harvard Law Rev.* 195, 213.

[31] Grotius, I, 1, 4. Cf. Rutherforth, *Institutes of Natural Law*, I, 2, sec. 3.

[32] "A moral power over others residing in oneself." Stahl, *Philosophie des Rechts* (5 ed.), II, 279. Cf. "A power over an object which, by reason of the right, is subjected to the will of the person entitled." Puchta, *Cursus der Institutionen*, II, sec. 207.

[33] *First Principles of Jurisprudence*, 15, 24.

[34] In his later work Salmond gives a better account of this in terms of interests. *Jurisprudence* (4 ed.), sec. 72.

[35] *Roman Private Law:* Jurisprudence, II, 629–630.

[36] See my paper, Legislation as a Social Function, *Pub. Am. Sociol. Soc.* VII, 148, 158–9.

[37] "Duty is the basis of right. That is to say, parties who have rights or parties who are invested with rights, have rights to acts or forbearances enjoined by the sovereign upon other parties." *Jurisprudence* (3 ed.), I, 307.

[38] "An interest protected by law." *Geist des römischen Rechts*, III, sec. 60.

[39] "A relation between persons, concerning an object, created by a particular fact, determined by a principle or a rule of law, for an end of human life." *Cours de droit naturel*, I, sec. 23.

[40] *E. g.*, "A relation sanctioned and protected by the legal order." Kohler, *Einführung in die Rechtswissenschaft*, sec. 6.

[41] *Summary of the Principles of Torts*, secs. 5, 6.

[42] Burlamaqui, *Principes du droit de la nature et des gens*, I, 2, chap. 6, sec. 2. Cf. Vattel, liv. I, chap. 13, sec. 158.

[43] *Pandekten* (8 ed.), I, sec. 38.

[44] Holland, *Jurisprudence*, chap. 7.

[45] *Pandekten*, I, sec. 37.

[46] *E. g.*, Bierling, cited in note 2 *supra*.

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[47] *Supra*, note 38.

[48] *Kritik der juristischen Grundbegriffe*, II, 49–73.

[49] See Merkel's comment, *supra*, note 6.

[50] See Miller, *The Data of Jurisprudence*, 96 *et seq.* Judicial usage in England and America is critically examined in Professor Hohfeld's paper, *supra*, note 2.

[51] *Moderne Theorie des Privatrechts*, secs. 4–9.

[52] *Einführung in die Rechtswissenschaft*, sec. 6.

[53] *Summary of the Principles of Torts*, secs. 4–8.

[54] Compare the attempt of Korkunov (Hasting's translation, p. 212) to do the same thing. According to him, subjective right is equivalent to right-power, which is the possibility of realization of an interest. So it includes (a) externally a claim (*Anspruch*), (b) internally the possibility of realization of an interest. Is not this an analysis of the meanings of an ambiguous word rather than of a conception or an institution of the law?

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A MORALITY CODES COMPETITION.

The Executive Committee of the National Institution for Moral Instruction, Washington, D. C., has accepted responsibility for the conduct of a *$5,000 Morality Codes Competition.* There are to be seventy code writers, one at least from each state, with twenty additional, selected for their ability to formulate a statement of the moral ideas which intelligent public opinion in their section of the nation believes should be taught children and youth in schools and homes. The state superintendent of public instruction is being asked in each state to act as a "co-operating educator" to select the "code writers." Presidents of state universities and of many leading educational institutions have been asked to be "patrons" of this undertaking, to assist with advice and influence.

"The Donor," a prominent business man, insists that his name shall not be made public; he is not after publicity, and has no selfish motive to prompt his efforts to arouse general interest in the character education of children. He regards this phase of education as of fundamental importance, and was surprised, on investigation, to find it the least developed and the most neglected. He has also furnished the Institution $2,500 with which to put through the competition, and will become a patron to the extent of $200 a year toward the running expenses of the Institution.

The plans for the Morality Codes Competition have been formulated with great care by the Executive Committee in consultation with the Donor, and printed in a consultation announcement, which can be had by addressing the Institution, in Washington, D. C. The expectation is that two books which will be published, one containing morality codes for elementary schools and the other codes for high schools. These will be authoritative, if all goes well, as to the prevailing opinion among intelligent people in all walks of life as to what moral ideas ought to be inculcated in children and youth. There is to be no discussion of methods of character education in these code books, but the income from their sale, if any, is to be used in research work by the Institution to develop some effective procedure for character education. The copyrights are to be in the name of the Institu-

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tion, and arrangements for sale and distribution are to be made with one or more of the regular text-book companies. The ethical character of the undertaking is guaranteed by the personnel of the Executive Committee, which has full control, namely—Milton Fairchild, chairman and director of instruction; Philander, P. Claxton, U. S. Commissioner of Education; Dr. Willard S. Small, principal Eastern High School; Dr. William C. Ruediger, dean of Teachers' College, George Washington University; and Miss Margaret Bell Merrill, A.M., teacher Western High School; all of Washington, D. C. The institution has a board of twenty-five Directors, of which Dr. David Snedden, Massachusetts State Commissioner of Education, is president, and Bernard Nadal Baker, Baltimore, Md., is honorary president. Seventeen of the board of directors are educators, and the institution is incorporated, for no personal profit, to do constructive work in the field of moral or character education, in co-operation with all institutions and persons interested.

Seventeen state superintendents have already accepted as co-operating educators of this "Morality Codes Competition," and twenty-five people of educational influence, most of them presidents of universities, have accepted as patrons. Willingness to become code writers has been shown by enough people of the right sort to assure the successful carrying through of the undertaking.

The patronage of the Federal Council of Churches of Christ in America has been extended by its general secretary, the Rev. Charles B. Macfarland, D.D., since the competition does not deal with religious ideas, but leaves that field for cultivation by the churches. Assurances have been given also by leading Catholic educators that the Catholic clergy will co-operate in this undertaking. All religious groups realize that all religious experience requires the fulfillment of morality on the part of the people, and that the support of morality is one of the great religious duties of the churches.

Justification for this effort to formulate "intelligent public opinion" as to what moral ideas ought to be taught children and youth lies in the fact that modern human life is so complicated and diversified that the experiences and observations of the individual do not furnish a sufficient basis for conclusions as to what is "right" and what "wrong" conduct in the details of

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daily life. General principles need to be applied to a very complicated existence and there is the difficulty for children. Teachers and parents need a higher degree of intelligence and confidence in the specific conduct instruction which they give children; they need knowledge of and the backing of public opinion.

Since there are to be only seventy code writers, it was necessary to enlarge the basis for the wisdom contained in these code books by arranging for several thousand "*letters of advice*" from people in all walks of life who are interested. Requests for these letters will be sent out in each state, and the Institution will assist by reporting interviews with parents who have been successful in bringing up children to the attainment of high character. The moral ideas which were inculcated in these successful homes will be ascertained and classified, and sent to the code writers. Inquiry will also be made among adults to discover what Mr. Fairchild calls the "effective moral environment" during childhood, that is the moral ideas to which they gave attention as children and by which they were influenced in their character development.

The occasion for a special notice in the INTERNATIONAL JOURNAL OF ETHICS is the need of advice from professional students of ethics. The Executive Committee wishes to ask that college and university professors of philosophy and ethics formulate a full statement of the moral ideas which their studies of the development of ethical thought lead them to believe essential in the character education of the nation's children and youth, and forward these to the Institution as advice for code writers. The $5,000 prize is the basis for organization. Its aim is to arouse code writers to special efforts; it is not to be divided, but to be a reward to the one who writes the best children's code in the estimation of the judges. There is no money compensation for writing letters of advice, but educators are appealed to on the ground of true professional ethics to utilize the opportunity which the $5,000 prize creates and to assist in determining what moral ideas the teachers of the nation ought to inculcate in children and youth.

Address,

NATIONAL INSTITUTION FOR MORAL INSTRUCTION,
WASHINGTON, D. C.

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BOOK REVIEWS.

CONCERNING JUSTICE. By Lucilius A. Emery. New Haven: Yale University Press, 1914. Pp. 170.

It would be going too far to say that the point of view of Judge Emery is that of one crying in the wilderness, but it is certain, as he himself admits, that the conception of justice that underlies his lectures is not the one which seems at the present time to find favor in current treatises, sociological and other, that have considered various aspects of the relations of the individual member of the state both with his fellow-members and with the state as a separate legal entity. The volume consists of the addresses delivered by Judge Emery in the William L. Storrs series of lectures before the Law School of Yale University during the year 1914. The subject-matter of the book consists of a discussion of two fundamental problems: first, what is justice; second, what is the form of legal machinery best adapted to securing it.

In discussing the nature and origin of justice the author makes two important exclusions (p. 41). He deals only with the precepts of justice in its exact sense, apart from and independent of "the precepts of religion, charity, philanthropy, benevolence and other similar virtues and even those of what is loosely called humanity." His second limitation is that he considers his subject "only with reference to those who have grown to the age of self maintenance and consequent freedom."

What then is simple justice as between individuals of the kind that is being considered? There are certain fundamental springs of action and of feeling, the author points out (chapters III and IV) that are common to all men. Among these are the desire to control his own actions, to acquire what it seems good to him to acquire, to do as he will with that which he has so acquired, and to compete with and to excel his fellows. That society may exist at all these desires and courses of action must be subject to restrictions, but these restrictions should be limited to those that are necessary to preserve equal opportunity of action for all members of the community, without regard to any difference in natural powers that may exist between them. This

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latter is fundamental, for equally as strong as the desires already mentioned is the further feeling that it is of the essence of justice that these restrictions should be uniformly imposed; an onerous limitation uniformly applied is more easily to be endured than one less burdensome but applied unevenly.

Just here, of course, is the vital difference between Judge Emery and writers of what may be called the social justice school. Judge Emery is perfectly clear in his doctrine. "I do not subscribe," he says (p. 64), "to the doctrine that 'the greatest good of the greatest number' is to be sought. The only legitimate search is for the good of the whole number without discrimination for or against any one. This sentiment found expression in the once popular slogan, 'Equal rights for all. Special privileges for none.' I say once popular, for to-day it would seem not popular in practice. True, special privileges are still loudly denounced, but under the name of special exemptions, they are still demanded by those who denounce them most loudly." Again (p. 67), "To sum up the matter, justice is the according to every one his right, and that right is such freedom of action in gratifying one's desires as can be exercised in harmony with like freedom by others. In other words, it is equal freedom, equal restraint."

These quotations, and the point of view that they illustrate, suggest many questions. As already stated, the author considers "only those who have grown to the age of self-maintenance and consequent freedom." This clearly excludes minors; as to them a different conception of justice must obtain. Shall we also exclude persons who, although of the age of self-maintenance, are in fact, for one reason or another and in varying degrees, not capable of self-maintenance? Again, is it always true that a restriction that operates unevenly is regarded as unjust? Do sweat shop employees forbidden to work over a given number of hours per week regard such restriction as unjust? Or are we to say that such a restriction is uniform because it applies to all sweat shop employees? If so, what is to settle the basis of uniformity of application for any given rule of law? Even if the discrimination is against one and not for one's protection, is it always felt to be violative of one's sense of justice? If "women and children first" were a rule of law and not merely of morals, is it clear that one would regard it as unjust?

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That justice can be preserved only by an independent judiciary is the thesis of the second part of the volume. This necessarily involves the power to declare unconstitutional acts of the legislature that violate the constitutional rights of the individual. In answer to the argument that the constitutional restrictions may as well be regarded as addressed to the legislature as to the courts, the author gives a list of legislative vagaries in the way of impetuous and ill-considered actions tending to show that these restrictions have been taken with no great seriousness. Granting that the individual is to have rights indestructible even by the legislature and that the formulation of these fundamental rights is to rest with the judiciary the need for its independence seems obvious. That the election of judges and particularly their election at frequent intervals tends to do away with the independence of the judiciary seems equally incontestable, and the recall of judges, so far as it is effective at all, is open to the same objection. These, in brief, are the successive steps in the author's discussion of the legal machinery necessary for the working out of justice.

One may very well agree with the conclusions reached by Judge Emery in this latter part of his work, independently of any agreement with the point of view adopted in the first part. If the judiciary is to be regarded as a branch of our governmental machinery, having distinct functions and purposes of its own, and not as a mere informal and indirect piece of machinery for popular legislative enactment, the need for its freedom and its independence of direct popular control would seem to be almost axiomatic. Legally there can be little doubt that those jurisdictions in which the judges are appointed or elected for long terms have a distinct superiority in the standing of their courts and in the value of the decisions of these courts.

The book is worth reading. One who holds the individualist and legalist point of view will find in it a clear cut exposition and justification for his belief; one who approaches the problem discussed rather from the point of view of the social needs of the state as an entity or of its needs as an aggregate of individuals, will probably not change his position but a reading may cause him to examine again the foundations of his belief.

H. A. BIGELOW.

University of Chicago Law School.

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WHAT OUGHT I TO DO? By George Trumbull Ladd. New York: Longmans, Green and Co., 1915. Pp. vii + 311.

This volume adds one to a rapidly growing list of books—books which furnish the ordinary intelligent reader with a simple yet authoritative exposition of the principles of a science, given in a small compass and with the least possible technicality. Such books should prove useful, and when, as in the present case, they are well and skillfully prepared, deserve hearty commendation. Professor Ladd is well-fitted to deal with problems of conduct; he writes out of full experience and can draw upon his more technical and elaborate ethical studies. The book is comprehensive in variety of topics discussed; wisdom is shown in the treatment of difficult moral problems; good judgment is displayed in the choice of illustrative material. One misses in a book of this sort the analytic division and subdivision of the subject-matter, with accompanying titles and sub-titles, which is a familiar feature of the text-book and formal treatise. Doubtless this is in some ways an advantage: the text-book arrangement, having the appearance of dry technicality, repels many readers. But the present form has also its drawbacks, I think; for the exposition of a science, no matter how informal, cannot well help being a reasoned argument and such an argument is much easier to follow when its successive steps are indicated by the typography.

The book is not uniform in quality. Some chapters are conspicuous by their excellence, while others are not as successful. Chapter VIII, entitled "Is There Only One Virtue?" is an instance of the former sort. This chapter is a model of what such exposition as the book aims at should be; it is remarkably clear and, because of the concrete manner of treatment, well-calculated to impress the mind of the lay reader. The author asks if it is possible to "unify" all the different virtues by reducing them to applications or aspects of a single principle. His conclusion is negative and this he enforces by considering what he regards as the three most notable principles for unifying the virtues that have been proposed in ethical reflection: Aristotle's conception of General Justice, the principle of Loyalty which reached its highest exaltation in feudal Japan, and the Christian conception of Benevolence. The discussion of these three types of ethical principle is illuminating, and carries conviction. Some other

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chapters fall far below this standard. This is true—unfortunately—of the first two. The distinction made in the first chapter of the four groups of "thoughts, ideas, and emotions" implied in the constitution of moral obligation, is not convincing, and this is not on account of any palpable error, but because no pains is taken to show that it is inevitable in the logic of the moral situation. In these earlier chapters, particularly, the writing gives evidence of haste, and lack of careful revision. Sentences are occasionally encountered so involved in structure as to require a second reading to bring out their meaning. The following may serve as an example: "The doubts which try the soul and put it on the rack of conflicting tendencies and emotions, under a sky of cloudy ideas and confused thoughts, and sure to be connected with efforts of the honest enquirer into the one question which puts them up to him day after day—the question, What ought I to do?" (p. 50).

Professor Ladd's ethical theory is, as we know, idealistic. Goodness he conceives in terms of self-conscious personality; the Moral Ideal is free personal development. "*The Moral Self in a process of development toward the Social Ideal*,—this complex of conceptions contains the whole domain of investigation for the student of ethics" (p. 257). With this general standpoint I find myself in hearty agreement, but the author's formulation of it seems to me vitiated by an abstract conception of personality and personal satisfaction. Goodness he identifies with the satisfaction of the moral consciousness of man, and this he regards as qualitatively distinct from the satisfaction of his sentient nature, or *pleasure*. Now this comes dangerously near to founding morality upon the demands and deliverances of a special faculty or moral sense; certainly it does accept as final the distinction between the natural and the intellectual or spiritual self. But surely when man's natural instincts and impulses are, through the action of intelligent choice, raised to the level of conscious desire, they are expressions of his personal will. In that case, their satisfaction is the satisfaction of man's personal self and consequently possesses moral value. What then is personal satisfaction but the growing *system* of such natural satisfactions becoming more and more comprehensive and significant as personal development proceeds?

HENRY W. WRIGHT.

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CRITICISMS OF LIFE: STUDIES IN FAITH, HOPE AND DESPAIR. By Horace J. Bridges. Houghton Mifflin Company, Cambridge, 1915. Pp. xvii+295.

The more critical of the eight studies comprising this volume appear to be chiefly concerned not so much with criticisms of life as it is, as with criticisms of life as it has been, criticisms of doctrines of "a pre-democratic and pre-scientific and therefore supernaturalistic age," now applicants for a new lease of life in some of the widely circulated deliverances of pseudo-science. In this spirit are exposed the fallacies of what the author characterizes as Professor Haeckel's "New Calvinism,"— original sin rebaptized heredity, predestination labelled determinism, and a materialism that leaves "no occasion for a hell after death only because it has provided such an efficient substitute in this life, in the shape of man's utter impotency, and the illusoriness of his spiritual aspirations." Sir Oliver Lodge is called strictly to account as soon as he appears to blur the distinction between belief in the possibility of immortality and belief in its actuality; and his authority as a man of science in the field of physics, which is even more secure than that of Professor Haeckel in biology, is shown to afford no guarantee of authority or of logical reasoning in the field of psychical phenomena. Nor are Mr. Chesterton's ear-filling and exhilarating detonations of paradoxes, with which he signals his heresy that turned out to be orthodoxy, allowed to confuse the mind bent on consistent truth. Mr. Bridges pays tribute to the sanity of ethical intuition, the most admirable attribute of Mr. Chesterton, which caused him to revolt from what he believed to be the inevitable tendencies of modern scientific thought—"the doctrine of the world-machine, the doctrine of mechanical determinism, the doctrine of the absolute dependence of mind on body, the new mythology in which hypostatized abstractions called Heredity and Environment replace the Adam and Satan of the old mythology," but he fails to find logical justification for Mr. Chesterton's romanticistic return to the pre-scientific formulations of orthodoxy. M. Maeterlinck and Ingersoll (criticisms of life make strange companions!), the one for his advocacy of euthanasia in extreme cases and under the auspices of science, the other for his attempt to justify suicide, are dealt with either as pushing the claims of scientific control beyond the legitimate limits of its own spirit and method, or as fallaciously framing the argument in merely anti-theological terms.

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If there may be a shadow of a doubt as to whether the author has always chosen foemen worthy of his trenchant logical steel, there can be none as to the usefulness of these contentions in defining ethical problems and in developing ethical doctrine in an interesting and instructive manner, nowhere shown to a better advantage than in the study, "Ellen Key and the 'New Morality' of Free Love." This study not only criticises the "Morality" in question as being anything but "New," but also discusses in an objective and conservative spirit various economic and ethical aspects of the institution of monogamous marriage.

More in the vein of constructive appreciation are the two studies dealing with literary expressions of religious experience, one, "Francis Thompson's 'The Hound of Heaven': A study in Religious Experience," emphasizing the personal and the universal aspects, the other, "Mr. Winston Churchill and Clerical 'Heresy,'" emphasizing institutional aspects—the possibility and the right to progress within a religious organization.

If criticism begets criticism, the question may arise as to whether the somewhat remote and shadowy concepts of the "Supremacy of the Moral Ideal," "Idealistic Naturalism," and the belief in "moral perfection" as the only rightful object of human worship, which are piously invoked in the book, or at least seriously entertained, are altogether consistent with the author's vigorous championship of concrete humanistic values and with the assumption of science as formulated by him "that there is no intelligent or providential interference with the order of nature except that of living human beings."

The book closes with an eloquent tribute to the "Victorious Death of Captain Scott," and with an Epilogue, "In the Time of War and Tumults," written at the outbreak of the European War, and holding international capitalism largely responsible.

W. C. Gore.

University of Chicago.

Encyclopædia of Religion and Ethics. Edited by James Hastings. Vol. VII, Hymns—Liberty. Edinburgh: T. & T. Clark, 1914. Pp. xx, 911.

Hastings' Encyclopædia vividly illustrates the triumph of comparative methods. This last volume contains, *e. g.*, an elaborate article of eighteen pages on Indonesians by Mr. A. C. Kruijt, with the literature of the subject condensed into three

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columns of small, close type by the expert hand of Sir J. G. Frazer. The value, nay the necessity, nowadays of this anthropological apparatus for the student of religions goes without saying. But to provide him with an article on Lake Dwellings by Dr. Robert Munro, packed with all the latest facts and theories, seems a piece of superfluous luxury. In this fascinating monograph the most careful scrutiny will only detect a few words which have the remotest connection with religion. This is perhaps an extreme instance of the way in which one thing leads to another, but a parallel case may be noted on the ethical side. Just as religion leads by way of anthropology to pure archæology, so, thanks to the connection of ethics with economics, we have a long article by Dr. W. R. Scott on the history, the theory, and the practice of insurance, a subject which seems to have as little to do with ethics as with religion. Of other economic articles,—*e. g.*, Laissez Faire by Prof. D. H. Macgregor, —the ethical relevance is more obvious; thus Professor Macgregor has to discuss the amount of blame that Adam Smith should incur for having systematized a doctrine which is offensive to our present collectivist conscience. The most important of the purely ethical articles in this volume is Professor Starbuck's Intuitionalism. Among the subjects on the border-land of ethics, law is represented here by several articles of first-rate importance. Law itself is dealt with in 21 sections by as many experts; Professor Vinogradoff, *e. g.*, writes on Greek Law and Dr. Casartelli on Iranian Law. Inheritance is similarly subdivided. Lord Guthrie writes on Juvenile Courts. Then there are full psychological articles: Hysteria and Insanity by Dr. John Macpherson, Inhibition by Dr. Irving King, Instinct and Laughter by Prof. C. Lloyd Morgan. Even literature finds a place; Prof. C. H. Hereford's Ibsen is a masterpiece of scholarly condensation. Mr. A. E. Crawley on Kiss is as learned and interesting as usual. The inclusion of this last article is natural, for the almost universal practice of kissing (the Japanese are an exception) has important ethical and religious bearings. But what shall we say of such philosophical and logical topics as modern mathematical theories about infinity, the law of identity, inference and judgment? It is a pleasant surprise to find them in an Encyclopædia of Religion and Ethics, but still it is a surprise. Even more curious, by the way, than the presence of an article on Judgment (logical) is the absence of one on Judgment (last) or (day of). Inference and Judgment are in the capable

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hands of Dr. Joseph Brough. It is no doubt from a laudable desire for completeness that Prof. J. S. Mackenzie, in dealing with the philosophical and logical meanings of infinity, also discusses mathematical theory, though this part of his article, perhaps from inevitable compression, is a little unsatisfactory. It is misleading, *e. g.*, to say that the conception of infinity as employed in mathematics is "that of a definite kind of endlessness," for endlessness is in fact irrelevant to the mathematical sense of infinity. A series is said to be infinite when the number of its terms is an infinite number (*i. e.*, a number with certain precisely defined properties), and such a series may or may not either have a beginning or an end or both. Of the philosophical articles, Mr. C. C. J. Webb's Idea is a model of what such writing should be. Identity is divided between Professor Poussin, who deals with the Buddhist doctrine of identity, and Prof. A. E. Taylor. Professor Taylor's discussion, ranging from the alleged first law of thought to the question as to what constitutes personal identity, is an original contribution to philosophy. He advocates the common view that memory is essential to personal identity, but in a paradoxical form. Some kind of continuity in mental development, "without which there could be no meaning in speaking of certain past experiences as mine," is necessary; and this continuity, he thinks, consists in the fact, not that we do, but that we are able to, remember all our experiences. A feature of this article (which indeed is not peculiar to it but is shared by the whole work) is its full and accurate references to literature. These are so well planned that it is perhaps hypercritical to note that Professor Taylor has not mentioned the discussion of personal identity in Dr. McTaggart's "Some Studies in Hegelian Cosmology," nor Dr. G. E. Moore's criticism of McTaggart's theory in the Proceedings of the Aristotelian Society for 1902, nor Dr. Moore's paper on Identity in the same place (1901).

In reviewing a dictionary the selection of points to notice is necessarily arbitrary, but I hope that these remarks have brought out the two distinctive peculiarities of Hastings' Encyclopædia. In the first place, the editors interpret Religion and Ethics with the widest generosity. This is not said by way of criticism; on the contrary, they are earning our warmest praise and thanks for steadily completing a work which is not only indispensable to students of theology, mythology, and ethics, but, which over and

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above this, nearly coincides in range with Baldwin's very unsatisfactory Dictionary of Philosophy. Nothing can be more welcome than this provision, the first ever made in English, of a really good philosophical encyclopædia. In this respect the scheme of the work must involve certain *lacunæ*; there is no article, *e. g.*, on Implication or on Induction, although one does not see why these headings should not be included if Inference and Judgment are. Probably the editors felt they must draw the line somewhere. But such omissions are trifles in comparison with what they give us. For, in the second place, the other feature which distinguishes this encyclopædia from everything else in English (*e. g.*, Baldwin's Dictionary or the eleventh edition of the Encyclopædia Britannica), is that there is no hack-work in it. All the articles are by first-rate authorities. The big articles (Jesus, Images and Idols, Hymns, are instances in the present volume) are minutely divided according to their branches; even the minor articles like Indigitamenta (Prof. G. Wissowa) and Italy (Ancient) (Prof. R. S. Conway) are allotted to specialists. But the thoroughness with which this principle is carried out appears sufficiently from what is said above. It is the chief reason why anyone who is interested in almost any branch of philosophy should put Hastings' Encyclopædia on his shelves.

SYDNEY WATERLOW.

London, England.

GERMAN PHILOSOPHY IN RELATION TO THE WAR. By J. H. Muirhead, LL.D. London: John Murray, 1915. Pp. xii, 110.

The war has made the man in the street recognise that philosophical ideas have an influence on "real life": he has seen what harm they can do; and he may conceivably be more ready in the future to admit that they are also capable of doing good. But at present the plain man is very apt to lump all German philosophers together in his comprehensive denunciation of "German philosophy," and in this book Professor Muirhead performs the necessary task of helping him to discriminate between the different tendencies of German thought in the last century. The purpose of the book is to show that the "German philosophy" which has been influential in leading to the war is not a develop-

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ment of the teaching of Kant and Hegel, but forms a definite reaction against it.

In the first two lectures Professor Muirhead traces the development of idealism in Germany, showing its rise as a reaction against the materialism of the eighteenth century, and its relation to the growth of the idea of the State. These chapters give a masterly presentation of the leading ideas of Kant, Fichte and Hegel, in their historical evolution. With a deft and sure touch Professor Muirhead indicates the significant elements in their teaching, taking special pains to deny the charge that Hegel is the philosopher of the Prussian military tradition. Those who attack Hegel on this ground point to the tremendously strong emphasis which he laid on the State. That is quite true; but, as Professor Muirhead suggests, Hegel believed that the State is a moral agent, and he expressly dissociated himself from the militarist doctrine that the State rests upon force. And Hegel's insistence on the rights and claims of the State was due partly to the conditions of his time. He had lived through the French Revolution; had come to realise the tendencies to anarchism and extreme individualism involved in it; and believed that it was his duty to defend the State as "the substance of individual, family, and national life." Further, he appreciated the evils of the continued intrigues of the small German States, and he was impressed with the practical necessity of vindicating the claims of *one* State, viz., Prussia, to be supreme. These circumstances led Hegel to give exaggerated expression to his conviction of the greatness of the State, and there can be no doubt that such expressions have, as a matter of historical fact, influenced the development of views to which Hegel himself would have given no support.

In the third and fourth lectures Professor Muirhead shows very clearly how idealism was gradually obscured in Germany by the reaction which was beginning even before Hegel's death. He traces the growth of pessimism, materialism and militarism, indicating the contributions of Nietzsche, Treitschke and others to the German militarist theory of the State; and in conclusion he mentions very briefly his hopes for the regeneration of Germany's better self. He looks forward to the conversion of Germany to higher ideals and a truer freedom, as these were conceived by its own thinkers at the beginning of last century.

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Professor Muirhead especially remarks on the fact that Germany started the last century with an idealist philosophy, which was adopted in this country, but almost abandoned in the land of its origin. On the other hand, the materialism and practicalism with which Britain began the century have been largely assimilated by Germany. Thus the two countries have exchanged their philosophies. But perhaps it ought also to be pointed out that the German philosophy of life in the widest sense has remained essentially the same. Our philosophy of life has also remained practically unchanged. Germany's philosophy is a philosophy of Method, emphasised in the formal categories and imperatives of Kant, the artificial principles of Fichte's *Wissenschaftslehre*, and the dialectic of Hegel, continuing to appear to a considerable extent in Germany's materialism and pessimism, and profoundly affecting the national genius, making it mechanical and even inhuman. Britain's philosophy of life, on the other hand, may be called a philosophy of "Bright Ideas": it is illustrated by her traditional sensationalism in psychology, empiricism in epistemology, particularism in metaphysics, and individualism in ethics. Method has never been congenial to the British mind; and even those Britons who have been most influenced by German idealism have been careful to extract its valuable content from the method and system in which it was set. In almost every department of life the competition between Germany and Britain has resolved itself into a conflict of Method *versus* "Bright Ideas."

G. A. JOHNSTON.

University of Glasgow, Scotland.

GERMAN PHILOSOPHY AND POLITICS. By John Dewey. New York: Henry Holt & Co., 1915. Pp. 134. $1.25.

Whereas Professor Muirhead (see preceding notice) regards the ideas now dominant in Germany as offering a sharp contrast with its classical tradition of idealism, Professor Dewey holds that there has been no break. The doctrines of Darwin and Nietzsche doubtless have their followers, but these doctrines are not sufficiently in accord with all aspects of the German genius and temper to explain the unity of spirit, the devotion, and the moral self-certainty which Germany now shows. The underlying philosophy, the author claims, is still idealism, not mate-

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rialism or naturalism. So prominent an idealist as Eucken, indeed, has been in the forefront in supporting the government's course. If we are puzzled to find any compatibility between idealism and Germany's present attitude, the answer lies in the fact that an idealism which is "absolute," detached from any considerations of human want or need, pain or happiness, scorning utility, and admitting no authority but "pure reason," is quite capable of supplying the basis for an absolute state and a ruthless *Kultur*. It is liable to become isolated in its "purity."

The root idea of German life and thought Professor Dewey finds in Kant's doctrine of the two realms, one outer, physical, and necessary, the other inner, ideal, and free. These are separate and independent, yet with a primacy of the inner over the outer. To the first corresponds in actual life the discovery and utilization of law in nature and industry; to the second, occupation with ideal ends. Not that Kant's philosophy caused Germany's development, but Kant "detected and formulated the direction in which the German genius was moving." "His formulation has furnished a banner and a conscious creed." It has contributed a sense of a national mission and destiny. "His formulation and its influence aids us to understand why the German consciousness has never been swamped by its technical efficiency and devotion, but has remained self-consciously, not to say self-righteously idealistic."

Kant, himself, was of course individualistic, and looked for a federation of republics, a cosmopolitan rather than a nationalistic ideal. But he set up a gospel of Duty—leaving no workable mode of finding out what it is that duty prescribes. It was an easy step for Fichte and Hegel to supply the gap. The state as the "universal" aspect of man became the moral superior whose commands coincide with the law of reason. "A gospel of duty separated from empirical purposes and results tends to gag intelligence. It substitutes for the work of reason displayed in a wide and distributed survey of consequences . . . an inner consciousness, empty of content, which clothes with the form of rationality the demands of existing social authorities" (p. 54).

In conclusion the significance of the present crisis for American life is briefly considered. Our social organization commits us to the method of "try," rather than to an apriori and absolutistic philosophy. But an experimental philosophy need not mean empiricism as hitherto formulated—the following of precedents;

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it must look forward with methodic and organized intelligence. In particular, if America is to contribute to a better international life it must be willing to recast its own views of isolated national sovereignty. The idea of peace, in and of itself, is negative; the positive ideal is: Promoting the efficacy of human intercourse irrespective of class, racial, geographical and national limits.

The book is arresting and suggestive—important out of proportion to its size. How far the German temper is at bottom what in these days it seems to the rest of the world to be it may be premature to say. Perhaps Germany itself will sometime decide that it has been deceived and misled by its Prussian militarists along just the lines which Bismarck himself describes. Then it may read again in more sympathetic mood the wise words of its great philosopher upon everlasting peace. And for the non-German who is reluctant to think that all German philosophers have followed without protest the Absolute of Treitschke, it is well to read again the comments of Paulsen (*Immanuel Kant*, 355–61).

University of Chicago. J. H. Tufts.

German Culture: The Contribution of Germans to Knowledge, Literature, Art, and Life. Edited by Prof. W. P. Paterson. Edinburgh: E. C. & T. C. Jack, 1915. Pp. x, 384.

Prof. W. P. Paterson contributes the Preface and the Essay on the German Contribution to Religion; History is treated by Prof. Richard Lodge; Philosophy by A. D. Lindsay; Science by Prof. J. Arthur Thomson; Literature by Dr. John Lees; Art by Prof. Baldwin Brown; Music by Prof. D. F. Tovey; Education by Dr. Michael Sadler; Politics by Prof. D. H. Macgregor.

The aim of the compilers of this book—to give both an account and an estimate of Germany's "substantial contribution to the common store of civilized humanity,"—is most opportune just at present, when many people consider it patriotic to depreciate even German science and German music. Unfortunately the brave and fair minded efforts of these learned professors are spoiled by the manner in which their facts and conclusions are presented to a public, which is probably more ignorant of the languages, history, and institutions of even its next door neigh-

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bors among the nations, than any other in Europe. The various essays are very unequal in length, style, and matter. There is no general synopsis of conclusions; there is not even an index! An unaccountable omission.

Incomparably the best—the briefest—of the Essays is Dr. Michael Sadler's fine summary of the achievements and limitations of German education. The least satisfactory is Professor Lodge's very perfunctory sketch of German and Prussian history. Professor Tovey's appreciation of German music is loaded with a mass of technical detail which will hardly enlist the attention of the Man in the Street; for whom, presumably, the book was intended. Prof. Arthur Thomson is also somewhat technical, but his lucid and systematic essay shows better than the most eloquent generalizations, the extent and value of the German contribution to all branches of science. This paper, which concludes with some suggestive remarks on "The Probable Fallacy of Using the History of Science as an Index of National Qualities," is an example of the nobility and sanity of Professor Thomson's point of view, no less than of his encyclopaedic knowledge.

There are certain omissions touching on those biological and social problems in regard to which English law and administration are still most defective. Something more might have been said of German applied science in agriculture and industry; of German town planning and municipal government. The German theatre, too, in spite of a dearth of exceptionally brilliant actors and actresses, is a serious and competent artistic factor. The Bürgerliches Gesetzbuch might have been analyzed and sometimes quoted with advantage, for instance, in the farseeing protection and care of the unmarried mother and her child. Comparison with the stupid, niggardly barbarity of the English "Bastardy" laws, suggests that we have something to learn from Germany as well as to teach her.

What is the most valuable quality of German life and institutions? They are far too rigidly and minutely organized; the educational system sacrifices every human faculty, mental and emotional, to the memory and the apprehension, with a brutalizing result which, long before the great war, was noticed by eminent observers, and has now been made unforgettably manifest to the present generation throughout the world. But there are in this "Kultur" with all its crudeness and defects, two very valuable characteristics: courage, and a keen, if limited, instinct for

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realities. An attempt has been made to build upon science and reason, rather than on the tribal legends and customs of the ancient Israelites, or the concepts of feudalism. It has become a warning to the world in its repression and degradation of the emotions, its dwarfing of individual initiative and responsibility except along carefully defined lines; but it is by no means only a warning. Dr. Sadler remarks that the spirit of modern Germany "hates shams and hypocrisies" and "is willing to try bold experiments," and he reminds us that "in the difficult days of social readjustment which will follow the war, there will be more need than ever for variety of experiment, for variety of educational tradition, for variety of responsible initiative."

F. W. STELLA BROWNE.

London, England.

IMPRESSIONS AND COMMENTS. By Havelock Ellis. London: Constable & Co., 1914. Pp. vii, 262.

Genius is a law unto itself, even when its flame is fed (not stifled, as in the case of lesser lights)—by a super-Teutonic mass of weight of learning. It is true of Dr. Havelock Ellis, in a far wider and deeper sense than Arthur Ransome said of Oscar Wilde, that "he has shown the possibilities of creation open to the critic." In these miniature essays he has again distilled from Nature and Art, from individual and social psychology, something instinct with all the value and complexity and charm of life, and infinitely suggestive of his superb conception of life. Many minds, to which the audacity of that conception of life is abhorrent, and its sweetness perilous, will be bewitched by the incomparable style, which is as perfect a vehicle for analysis, argument, and irony, as for representing and appreciating beauty in all its manifestations. A special interest attaches to the description of French architecture, literature, and civilization, and to the tribute to "the essential French spirit, so recklessly gay, and so daringly poignant, so happily exquisite in its methods and so relentlessly direct in its moral." He calls for veracity and for technique: "The road is long, and a high discipline is needed and a great courage, if our English literature is to regain its old power, and exert once more its proper influence in the world." Note, a high discipline, as well as a great cour-

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age; for "you might say that a fountain that leaps largely and exquisitely up toward the sky, only needs free room and space. But no, it also needs compression and force, a mighty restrained energy at its roots, of which it is the gay and capricious flower." Or again: "temptation is even more than a stimulus to conflict. It is itself, in so far as it is related to passion, the ferment of life. To face and reject temptation may be to fortify life. To face and accept temptation may be to enrich life. He who can do neither, is not fit to live."

How tenderly he re-interprets all that was lovely and precious in Christian doctrine—for instance the worship of "the Mother whose Child has no father save God." How unforgettably he pillories certain archiepiscopal pronouncements about the "White Slave Traffic," and exposes not only the facts which the Church connives at, while "incongruously mumbling the Sermon on the Mount," but, the inadequacy of the great Galilean mystic's original teaching, as a system of social ethics. For Dr. Ellis' work is really constructive; his knowledge, his genius, and that intellectual integrity which is itself a form of genius, all work toward the rebuilding of our muddled world. The merit of his work, in short, is not only its æsthetic delight and intellectual interest, but an inspiration which should help us to face catastrophes without entire collapse of sanity or courage.

F. W. Stella Browne.

London, England.

The Position of Woman in Primitive Society. By C. Gasquoine Hartley (Mrs. Walter M. Gallichan). London: Everleigh Nash, 1914. Pp. VIII, 275.

Mrs. Gallichan's aim in this book is to prove that at one stage in the development of society "the family was not founded on the authority of the father." She makes a very good case for the frequency in early societies of the matriarchate and the excellent results thereof, while, feminist that she is, she does this because she believes "our decision on this question will affect our outlook on the whole question of Women's Rights and the relationship of the two sexes."

Two comments will be made by the average impartial reader: In the first case can one trust an avowed partizan, who has not

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had a scientific training in investigation, to give an impartial statement of the case for and against matriarchy? The book is obviously written for the unlearned reader who can not verify either Mrs. Gallichan's facts or conclusions, but if, though unlearned, he is intelligently cautious he will probably find himself wondering what an anti-feminist would make of the same facts.

In the second case, granted Mrs. Gallichan's conclusions are correct, have they any direct bearing on present-day problems? Surely no reasonable being denies that women organize and manage certain departments of human life excellently, but it is a far cry from a primitive state to modern Europe. Nor would many women have a revival of matriarchy if with it had to come that division of labor which according to this author was one of its essential causes.

NANCY CATTY.

London, England.

WHAT DO WE MEAN BY EDUCATION? By T. Welton, D.Lit., M.A. London: Macmillan & Co., 1915. Pp. xii, 256.

In this book Professor Welton discusses firstly the ultimate aim of education, and secondly the means by which the aim may be attained. Our aim in education must, he insists, depend upon our theory of life, and hence no complete agreement about it can be hoped for at present. The means must be dependent on the aim, being stated for the most part in the form of hypotheses. The element of truth in this argument does not however, we think, justify Professor Welton in separating the examination into the "aim" from that into the "means," still less in relegating all "inductive inquiries" into actual educative work and into child psychology to the latter investigation. Some of the most notable advances in modern educational science, to which Professor Welton himself has contributed, have been made by a systematic study of child nature with its instincts and impulses, and of the effects of educational practice, and these researches have in fact modified the aim which educators now feel able to set before them, as well as the means which they adopt to attain it. To attempt to decide fundamental educational principles without constant reference to this inductive knowledge is either to go back to the dogmatism of earlier writers and to risk falling into some of their absurdities, or to be content with generalities which win ready

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acceptance because each teacher can put his own interpretation upon them. And indeed Professor Welton's statement of aim seems to us to belong to the latter class, though the syntheses of divergent theories by which he arrives at it are in themselves lucid and valuable.

Incidentally, Professor Welton's strictures on the work of experimental psychologists in connection with education seem hardly fair. Even the studies of fatigue, here criticised, have a negative value, whilst the investigations into different types of memory have obvious practical uses. Indeed it is difficult to understand the remark that "the power of retention," as such, is valueless. No doubt other types of memory are preferable, but no one who lacks the mechanical ability to retain easily things read or heard will ever underrate it, and its presence or absence in children is certainly important to those who regulate their work. Although educational science cannot attain the exactitude of the physical sciences, yet scientific and mathematical methods are applicable to it, as they are for instance to economics, and to criticise their use on the ground that the "average" child is "a mere symbol" suggests a misunderstanding of the whole meaning and application of statistics.

The aim of education being determined, Professor Welton discusses in a carefully reasoned chapter the true nature of freedom and the sense in which such freedom is possible or desirable in childhood, and what should be the relation of liberty to authority in education. But whether or no we agree with his conclusions we must regret his attack on the *Émile*, partly because Rousseau's revolt against "authority" served a useful purpose as a corrective, and still more because the exaggerations involved in it are so glaring that serious refutation seems waste of time, whilst the book as a whole has been and is a source of delight and inspiration. And Rousseau's worst mistake lies not in his vain attempt to avoid "authority," but in his assertion that children have neither emotions nor reasoning powers. A normally affectionate boy, brought up in close companionship, as Emile was, with a friendly tutor, might probably at the age of twelve, be so docile and devoted to the said tutor as to upset all Rousseau's calculations. Strangely enough Professor Welton himself seems to fall into a somewhat similar mistake in his analysis of child nature by ignoring the existence of the so-called "social" instincts. Hence he assumes that those educationalists who claim to rely chiefly on children's instincts and impulses—whose theory he calls in a

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curious phrase "the extreme psychological view"—are regarding the child merely as an individual and encouraging him in "an absolute disregard of the feelings and wishes of others." But children show protective and unselfish impulses towards their younger brothers and sisters and towards animals just as they show impulses towards fear and curiosity, and these and other instinctive tendencies must be regarded as the germs of what Professor Welton calls the "higher spiritual life," which is consequently better described as a development of instinct than as "beyond" instinct.

The two remaining chapters, on the "Means" and the "Agents" of education, contain much suggestive exposition of current educational topics. Perhaps the most valuable sections are those on the connection between a boy's home interests and outlook, and the kind of subject which he is likely to appreciate in school. This point and the corresponding claim of the parent to a voice in what his child learns, deserve more attention than they have hitherto received, and Professor Welton's remarks should help to correct some too prevalent opinions such as that the half-time system persists entirely owing to parental short-sightedness and selfishness. There is an interesting discussion, too, on the different types of schools which are desirable and on their respective functions, and on the need for more and better-planned diversity. Finally we welcome the just appreciation of the position of those to whom definite teaching of dogmatic religion seems an essential part of all education: anyone who has discussed this subject with average "undenominationalists" will sympathise with Professor Welton's comment on their frequent inability to understand it.

CHRISTABEL MEREDITH.

Bangor, Ireland.

KANT'S CRITIQUE OF JUDGEMENT. Translated with Introduction and Notes by J. H. Bernard, D.D., B.C.L., Bishop of Ossory. Second edition, revised. London: Macmillan & Co. 1914. Pp. xlviii, 429.

Dr. Bernard, now Bishop of Ossory, is to be congratulated on the appearance of a second edition of his translation of Kant's *Critique of Judgement*. His translation, published over twenty-one years ago, was the pioneer English translation of the last of Kant's three *Critiques*, and it still remains the only one that

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covers the entire work. The German text has been carefully revised by Professor Windleband, whose fine edition forms the fifth volume of Kant's Collected Works as issued by the Royal Prussian Academy of Sciences (Berlin, 1908), and this revision has necessitated a number of changes in the new English version. These changes, some corrections suggested by works that have since appeared, and the substitution of the word *Critique* or *criticism* for *Kritik* throughout, seem to account for the only alterations that have been made. It would, of course, be too much to expect the Bishop, who has now many demands on his time, to undertake a complete revision; but there were some serious mistakes that one would have thought might have been brought to his notice. Thus at page 15 we read: "This is the *Judgement*, of which we have cause for supposing according to analogy that it may contain in itself, if not a special legislation, yet a special principle to be sought according to laws, though merely subjective *à priori*." The rendering: "a special principle of its own to be sought according to laws," seems to follow rather closely that of M. Barni, whose work Dr. Bernard says he had before him while performing his task, but did not find of much service (xlv). M. Barni's version reads: "un principe qui lui est propre et qu'on doit chercher suivant des lois." As M. Victor Basch points out in his *L'Esthetique de Kant*, page 13, n., this translation "contient un gros contre-sens," and he gives the correct translation "un principe particulier pour chercher des lois." The principle is *heuristic only*, and merely subjective. This is the fundamental point of the whole *Critique*. Casual slips, such as the omission of words, are also mistakes which one would expect to see corrected in a second edition. Thus, to take a case at random, at page 368 "*à priori*" should be inserted after the word supply in the following passage: "But in the absence of a final purpose which pure reason alone can supply," etc. Strange to say, M. Barni makes the same slip. In the following sentence, which occurs at the foot of page 413, we have both a mistake and a slip: "a principle this of which mere speculative philosophy (which could give a merely negative concept of freedom) must despair." The sentence should run "of such knowledge mere" etc.; and the word "even" is omitted before "of freedom." Both mistake and slip occur in M. Barni's translation. A number of other such instances might be cited tending to show that if the French translation was not of much service to

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Dr. Bernard it was often positively misleading. M. Barni's excellent translations of the three *Critiques* are still the standard French translations, and it is not improbable that Dr. Bernard was more indebted than he imagined. Conscious of the time and labour which he must have expended on his own translation, he naturally underestimated the assistance which he derived from the French version. But it is to be hoped that those who come after Dr. Bernard will be more generous to him than he was to M. Barni.

Dr. Bernard has republished his original Introduction without alteration of any kind; and, after such a lapse of time, it would have been an almost impossible task for the Bishop to have resumed his studies and brought it completely up to date. But, as he was making corrections from Windleband's edition he might have read the short Introduction which would have made him correct the statement at page xviii that Kant "borrowed little from the writings of his predecessors." As Windleband says, and as Otto Schlapp had previously proved, Kant had an extraordinarily extensive knowledge of the French and English writings on the subject. He spoke to his pupils of English works which are now almost forgotten, *e.g.*, Gerard's *Essay on Genius* (German translation, 1776), which he said was the best work on the subject that had appeared. The influence of his extensive reading appears everywhere. As a whole, however, the Introduction will be found of considerable use to the average student who desires a succinct survey of the *Critique*.

J. C. MEREDITH.

Dublin.

SHORTER NOTICES.

RAILWAY CONDUCTORS, A STUDY IN ORGANIZED LABOR. By Edwin Clyde Robbins. New York: Columbia University, Longmans, Green & Co., Agents, 1914. Pp. xii, 183.

The monograph is divided into three parts: history and government, trade regulations and means of enforcement, and beneficiary features. A sidelight is thrown upon the need of the strike by trade unions. Prior to 1890 the Order of Railway Conductors was opposed to strikes. It was felt "that the Order was not a labor organization; that the strike, as a practical measure, was a failure; and that it was contrary to the principle of individual liberty." But the organization could not continue to maintain this policy, and, when it discarded it, the Order made rapid growth. The public is perhaps interested in the arguments advanced by the Rail-

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way Brotherhoods concerning wages and hours. They are as advanced by the Railway Conductors: (a) The hazardous nature of the calling, (b) the responsibility of the conductors, (c) the long terms of apprenticeship required, (d) age-limit rules, (e) the increased productivity of the conductors, and (f) the increased cost of living. Furthermore, the Railway Brotherhoods are pooling their forces in the fixing of wages and hours. The Railway Conductors are in favor of having "the unions make one general agreement for all the roads, irrespective of size or location." In addition to death and sick benefit insurance which already exist there has been an agitation for old age pensions. It is interesting to observe this broadening out of the functions of trade unions. One may sum up the paper as a whole by saying that it is good case material for a study of trade unionism.

N. F.

KILLING FOR SPORT. Essays by various writers, with preface by G. B. Shaw. Edited by Henry S. Salt. London: G. Bell & Sons, 1915. Pp. xxxiv, 186.

A useful volume, containing statements by distinguished humanitarians of the moral and economic arguments against "blood-sports." Mr. George Greenwood, Mr. Edward Carpenter, Mr. H. B. Marriott Watson, and Mr. Ernest Bell develop the argument from cruelty, with telling illustrations from real life; it is, roughly, that the evils involved—namely infliction of unnecessary pain, callousness to pain, and even pleasurable excitement in torture—far outweigh any good that can be got from killing animals for pleasure. Even angling, of all sports the most idealized for its innocence, is condemned; we are aptly reminded of Byron's sally against Izaak Walton—

> "The quaint old cruel coxcomb in his gullet
> Should have a hook, and a small trout to pull it."

But on p. 176 Mr. Salt should in fairness have mentioned that the tarpon is usually not killed, but released after being pulled in. Mr. Bernard Shaw contributes a lively preface condemning sport on the ground that it implies a lack of fellow-feeling; it is "a sign either of limitation or timid conventionality," and he would abolish the man who can think of no better way of amusing himself than by this barbarism. This lack of sympathy with the limitations of the average man is characteristic of Mr. Shaw, as is his inability to resist a joke; if he had not wanted to make a point about the desirability of child-hunting, he would hardly have asserted, in opposition to some of his colleagues, that sport is good for the animals. In general the authors have little difficulty in demolishing the arguments commonly urged in favor of sport; this was to be expected, seeing that they are merely the attempts of unreflective minds to justify an instinctive prejudice. But on the positive side they are less successful, the chapters dealing with the economic arguments being especially superficial and journalistic. The Humanitarian League, for whom the book is published, might do worse than promote a serious investigation into the economics of sport.

S. W.

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THE HEALING OF NATIONS: AND THE HIDDEN SOURCES OF THEIR STRIFE. By Edward Carpenter. London: George Allen & Unwin, 1915. Pp. 266.

The first passages in this book—and some are very fine—touch on aspects of the great war which are apt to be slurred over and neglected. Mr. Carpenter emphasizes the joint responsibility of the big German industrial and commercial interests for the war which British public opinion is apt to ascribe to Prussian militarism alone. He also insists on the political ignorance and docility of the bulk of the German people, but misses perhaps the most instructive example of a machine-made public opinion based on greed and envy; namely, that systematic calumny of the Slav peoples, which was already in full swing ten years ago and is expressed in Werner von Sombart's sneer at Montenegro's long record of heroism and suffering. Germany's dealings with the Slavs are the blackest part of her record before the war and deserve much more detailed exposure. Mr. Carpenter, however, dwells especially on Anglo-German relations, with a detachment which does not spare the bagman's view of international responsibility, whether expressed by individual British business men or by the British Empire League and similar paying concerns in which "Vanity and greed are met together: patriotism and profits have kissed each other."

Nevertheless the book is disappointing. There is a lack of cohesion, of definite "grip." In the latter half, especially, some supremely important issues, raised by the war, are touched on, in an interesting and suggestive, but curiously haphazard fashion. No doubt the temperament of a seer and poet is antipathetic to the military and political terrain on which part, at least, of the struggle for a "new World" must be waged; but something more distinctly constructive might have been expected from a Socialist of genius. In spite of the noble dignity of outlook, the psychological insight, and luminous beauty of phrase in certain passages, the book cannot in any way rank with "Towards Democracy," "The Art of Creation," or the essays on the social value and individual variations of love.

F. W. STELLA BROWNE.

London, England.

THE INTERNATIONAL CRISIS IN ITS ETHICAL AND PSYCHOLOGICAL ASPECTS. Lectures by Eleanor M. Sidgwick, Gilbert Murray, A. C. Bradley, L. P. Jacks, G. F. Stout, B. Bosanquet. Oxford University Press, Humphrey Milford, 1915. Pp. ii, 154.

This book consists of six lectures all by persons of distinction, from whom, since they are neither journalists nor politicians, we might expect outspoken denunciation of the crime of war. But on the whole they hardly rise to their opportunity. Mrs. Sidgwick, indeed, says that war is an awful calamity; but it may be right for a state to fight, as now it is right for England. Professor Gilbert Murray, analyzing the psychology of the herd with his usual charm and skill, points out some of the bad effects that are bound to follow if we abandon ourselves to instinct and forget that reason is the only hope of humanity. Dr. Bradley condemns war, but briefly and with qualifications; there is some good in it, and perpetual peace without the "noble and glorious energies of the soul" which appear in war, would be a poor thing. Professor Stout discusses acutely the ethics

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of hatred. Hatred (which is not the same as just resentment) is always wrong because it is blind, and in point of blindness in this attitude towards their enemies there is not much to choose between the two belligerent groups. Dr. Bradley and Dr. Bosanquet discuss the nature of the state, and agree that, as things are, morality is not the same for the state as for the individual. In all this there is much that is true and wise; but we are disappointed by the absence of any attempt to state, except in vague and general terms, the whole nature and extent of the evil of war. One of the lecturers, Mr. L. P. Jacks, is even distinctly Prussian in tone; he dwells with gusto on the goodness of war. It is, he admits, utterly irrational; but then it is "the real thing." The state, from which we expected everything before, now expects everything from us; our national consciousness is being extended, and the nations of Europe are discovering their souls. For him that process seems chiefly to mean the discovery that the pursuit of wealth is at the bottom of all social ills; he thinks that the nations have got rich too successfully. Certainly when the war is over there will be less wealth to go round, with the consequence that the poor, who form the vast majority of "the nations," will be poorer than before, and therefore perhaps more easily kept in a state of cowed quiescence; but Mr. Jacks does not explain how this will be a benefit to European civilization.

S. W.

THE NATIONAL CULTURE AND SOCIAL INSTITUTIONS OF THE SIMPLER PEOPLES: An Essay in Correlation. By L. T. Hobhouse, G. C. Wheeler and M. Ginsberg. London: Chapman & Hall, 1915. Pp. viii, 299.

No one who wishes to generalize about the ethical evolution of mankind can afford to neglect this painstaking piece of sociological research. The authors classify all existing primitive races according to the degree of their economic culture, from the Lower Hunters to the Higher Agriculturists. They then institute a statistical enquiry as to the number of tribes at each level possessing some particular institution, such as a system of government or justice, a marriage custom, a method of warfare, their object being to throw light on the question whether the figures will warrant any correlation of a given practice with a given stage of culture. The facts, as exhibited in their tables, are so complex that they are chary of drawing positive conclusions; but they hold that in several cases, after due allowance made for error, the broad fact of correlation may be taken as established. The London School of Economics is to be congratulated on this, the third of its sociological monographs.

S. W.

THE PSYCHOLOGY OF THE KAISER. By Morton Prince. London: T. Fisher Unwin, 1915. Pp. 75.

Dr. Prince is very sure of two things: that the German Emperor is mentally a pathological subject, the victim of self-regarding phobias; and that this malady of an exalted personage is the mainspring of German militarism and autocracy. One barely knows which to wonder at most—the vagueness and incompleteness of the evidence on which Dr. Prince bases his diagnosis, or his naive misconception of the causes of political phenomena. This little book can only injure the high reputation which he won by his work on *The Dissociation of a Personality*.

S. W.

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THE PRISONERS OF WAR INFORMATION BUREAU IN LONDON. By Ronald F. Roxburgh. London: Longmans, Green & Company, 1915. Pp. xvi, 64.

By Article XIV of the Hague Convention the governments of belligerent states are pledged to set up bureaux for the purpose of keeping records of prisoners of war and of enemy sick and wounded, of supplying lists of enemy dead, of taking charge of personal effects, and of answering enquiries and dealing with letters, parcels, and gifts sent to prisoners of war. The usefulness of these bureaux in softening the hard lot of prisoners of war, and in relieving the anxieties of the friends and relations of the captured, the wounded, and the dead, is obvious; it is the one exception to the general failure of all attempts to mitigate the evils of war by international convention. Hence the interest of this detailed study of the working of the Prisoners of War Information Bureau established by the British Government in London. We have no information as to the corresponding organizations set up by other governments, but it is to be hoped that they meet international obligations in this respect with the same liberality and efficiency as appear to be displayed by the British Government.

S. W.

SELECTIONS FROM THE SCOTTISH PHILOSOPHY OF COMMON SENSE. Edited By G. A. Johnston. Chicago & London: The Open Court Publishing Company, 1915. Pp. viii, 267.

Mr. Johnston has done a useful work in compiling this handy volume of extracts from the writings of Reid, Beattie, Ferguson, and Dugald Stewart. He prefaces them with an admirably clear account of the Scottish "Common Sense" school, explaining Reid's merits as a philosopher in a way that is especially valuable, since Reid is almost always underrated and his position misunderstood. Mr. Johnston's judicious selections, which include extracts from Reid's work on morals, should convince many who do not possess the bulky volume collected by Sir William Hamilton that in Reid's attack on the Descartes-Locke tradition is to be found writing as good, in its way, as anything in the whole circle of philosophy.

S. W.

ÉMILE DURKHEIM'S CONTRIBUTIONS TO SOCIOLOGICAL THEORY. By Charles Elmer Gehlke. New York: Columbia University, 1915. Pp. 188.

This monograph which is published as the first study in volume LXIII of the Columbia Studies in Political Science is an attempt to evaluate the doctrines of Émile Durkheim. It should be of especial interest to those who do not find readily available the works of this eminent French sociologist.

The author has not merely given a fair account of Durkheim's doctrines supplemented by numerous references to the original works, but also has offered a number of excellent criticisms. These are directed to the premises underlying Durkheim's theories.

Of especial interest to the student of ethics is the material devoted to the discussion of the ethical implications of Durkheim's sociology. In conformity with Durkheim's general philosophy the method of studying moral phenomena is objective. The student of ethics is concerned with the objective facts of the moral life. These moral facts are "rules of action" which are distinguished by the characteristics of obligation and desirability. These characteristics are results of the relationship of an individual to society. There is involved here the central factor of Durkheim's

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entire system in so far as he has one. This is the social mind. Since the individual is helpless and dependent upon the social mind, the moral rules appear to the individual as thoroughly obligatory. Again, being part of the social mind, the individual in performing a moral act is functioning in harmony with the whole. This performance of the moral act is then normal and gives pleasure, consequently the desirability characteristic emerges.

The ethical life of man is of course always to be considered from the standpoint of a group, some kind of collective whole. The morality consists in "all that is a source of solidarity," and Durkheim works this out on the basis of a division of labor.

The monograph seems to fulfill admirably the avowed intentions of the author.

J. K.

A MANUAL OF ETHICS. By J. S. Mackenzie, LL.D., Litt.D. Fifth edition. London: W. B. Clive, University Tutorial Press, 1915. Pp. xxii, 500.

The merits of Professor Mackenzie's Manual of Ethics are so well known that it is unnecessary to do more than call attention here to its appearance in a fifth edition. Since the fourth edition, now some fifteen years old, several important contributions have been made to ethical study, notably Dr. G. E. Moore's *Principia Ethica* and *Ethics*, largely in consequence of which Professor Mackenzie has made a number of changes in the present edition. Of these the most substantial is a new chapter on "Further Determination of the Ideal" (Book II, ch. vi), designed to bring out his relations to Dr. Moore's views. With these Professor Mackenzie says that he is in the main agreed, especially as to the objectivity of moral judgments and intrinsic value. There seems to be no reference to Dr. Moore's theory of organic unities, which is one of the most original and fruitful parts of his doctrine. Professor Mackenzie has also added several notes, which include useful references to recent literature.

S. W.

A HISTORY OF PHILOSOPHY. By Clement C. J. Webb. London: Williams & Norgate; New York: Henry Holt & Co., 1915. (Home University Library Series.) Pp. 256.

Most histories of philosophy consist of statements that Philosopher A held such and such views, and that the views of Philosopher B were a natural development of one side of them,—statements which are apt to leave the general reader perplexed, because the views in question still seem odd and only half intelligible, and he does not see why A or B should have held those views rather than any other. Mr. Webb, on the other hand, tells the general reader exactly what he wants to know. He explains the main points of each philosophy from Thales to T. H. Green, not only in a way that everyone can understand, but in a way that makes them seem natural and right; given the circumstances, we feel, that is just the view that would have occurred to a mind like (say) Plato's or Kant's, and obviously there is a great deal to be said for it. This, which may be called the sympathetic method of popularizing philosophy, has great advantages, which Mr. Webb amply realizes; its drawbacks—that it tends to debar the historian from searching analysis and to commit him to controversial statements—he nearly, if not quite, avoids. But, whatever details might be criticized here and there, the fact remains that, for the general reader,

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Mr. Webb has written an almost perfect book. The chapters on Greek philosophy, on the transition to Christianity, and on the debt of Christianity to the ancients are best, but all is good. It is not merely that the author has achieved a marvel of condensation; he has turned what is usually a dreary catalogue into an ingeniously articulated narrative; it is a work of art, not a piece of peptonized erudition. The student of ethics will perhaps regret that more space could not be found for his subject; but he will read the whole book with profit, and, if he is a specialist, he will appreciate the soundness and the extent of the learning that has gone to its making.

S. W.

THREE LECTURES ON ÆSTHETIC. By Bernard Bosanquet, D.C.L., LL.D. London: Macmillan & Co., 1915. Pp. ix, 118.

Æsthetics, Dr. Bosanquet says, is a branch of philosophy, and part of what is meant by this seems to be that it should consist in an investigation of the "peculiar form of value" of the æsthetic attitude as distinguished from other attitudes and objects in our experience (p. 2). Yet he confines himself almost entirely to describing the æsthetic attitude, his conclusion being that it is "the pleasant awareness of a feeling embodied in an appearance presented to inspiration or imaginative perception; or more shortly, 'feeling expressed for feeling's sake'" (p. 36). In expanding this definition he says much that is shrewd and felicitous, but nothing that helps to state, much less to solve, the distinctively philosophical problem of æsthetics. That problem seems to be, granted that the æsthetic attitude has value, to classify it in relation to other values and to discover on what its value depends. Unless this aim is kept in view and æsthetics is treated as a branch of ethics, analysis of æsthetic pleasure tends to become mere psychology, which is certainly not what Dr. Bosanquet intends. He tells us that in these lectures he has tried to "talk straight and not learnedly," but nevertheless they make difficult reading.

S. W.

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THE FORCE OF PRECEDENTS IN INTERNATIONAL LAW.

JAMES PARKER HALL.

TO MANY persons, the incidents of the present war doubtless demonstrate the complete breakdown of international law as a system of rules binding belligerents against their wills in any important particulars. To such persons any argument to the contrary may seem only an exhibition of audacious casuistry unworthy of serious attention; and perhaps the more conversant such persons may be with the minutiæ of the subject the more likely they are to hold this opinion. Nevertheless, I venture to think that so pessimistic a view arises rather from some misunderstanding of the true function of precedents and usages in the making of law than from any actual and widespread "scrapping" of well-established principles.

Let us waive any discussion of the nature or sanction of those rules of public international law which will not be enforced in the courts of a nation against the commands of its own municipal law or in opposition to its own military practices. Let us assume—what is of course very debatable—that such rules are to be treated by us really as law, on the same footing as the law of Illinois or of England, some parts of which may also be temporarily or even for long periods actually unenforced or unenforcible in the

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courts of certain localities (*e.g.*, the criminal law against Sunday liquor-selling in Chicago, or against husband-killing over wider American areas).

Now, whence come both the law of Illinois and these rules of international law just mentioned? Essentially they are derived from the same *kind* of sources. Modern Anglo-American municipal law[1] is derived from five sources: legislation, custom, judicial precedent, professional opinion, and public policy.

In the case of Illinois the governing legislation (written law) consists of the federal Constitution and treaties, the state constitution, valid acts of Congress and of the state legislature, similar acts of various municipal sub-divisions of the state, and a great variety of rules and orders of various tribunals, boards, commissions, and departments of the state and federal governments, having minor or incidental legislative powers. In the absence of any common legislature for independent nations the corresponding sources of the really international parts of international law are treaties. Where an applicable treaty has been broken it is quite correct, of course, to speak of a violation of international law. Many treaties, however, are not applicable between hostile belligerents, or are only applicable under conditions that may not exist; and of course both the applicability and the interpretation of treaty provisions may be disputed.

Custom, which is generally believed to be the source of most early law, plays a very subordinate part in the formation of modern unwritten municipal law. The early customs which had the force of law were all long ago so declared by judicial decisions, which, under Anglo-American legal usage, speedily came to be themselves regarded as the immediate authority for future decisions following them, and to-day, when prompt resort to the courts is so easy and common, it is extremely rare that any custom

[1] By "municipal law" is here meant, of course, all of the domestic law of the jurisdiction in question, whatever its source or the extent of its applicability. It has no reference to the special rules governing municipalities.

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becomes so well-established in advance of litigation as in itself to be the source of a new and independent rule of law. Custom still has an important function in the interpretation and application of various general rules of law, like those for discovering the meanings of contracts, the intentions of parties, the reasonableness of conduct, and so forth, but it is almost wholly confined to this incidental service. In international matters, however, custom is still a considerable source of law. Nations cannot be forced into courts against their wills, and arbitrations dealing with general questions of international law have been comparatively rare, so that upon many subjects the voluntary usages of nations constitute the principal or most persuasive sources of authority. It should be observed, however, that customary law, whether municipal or international, must be based upon a clear consensus of *actual practice*—not merely upon a body of opinion that such practices ought to exist, and that the existing practice must have included cases whose essential facts are either like those of any new one alleged to be within the custom or at least not so different that any substantial reasons can be given for the application to them of a different policy. Otherwise, the argument in regard to a new case is not based upon *custom*, for the new situation being essentially novel has not yet become the subject of custom, but is attempted to be based upon *analogy* to a custom, and may of course be met by counter-analogies and by various arguments based upon alleged professional opinion or public policy.

Judicial precedents are in Anglo-American usage the chief immediate source of municipal law, even where the ultimate source has been something else. Thus, a rule may have originated in custom, professional opinion, public policy, or even in a statute, but, once it has been declared in a judicial decision (in the case of a statute taking the form of an interpretation of the legislative meaning), succeeding cases of like import are almost certain to be decided upon the authority of the previous decision, which,

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by frequent references of this character, finally becomes not only practically but theoretically almost as fixed a part of the law as even a statute that it interprets. On the continent of Europe no such effect is theoretically attributed to judicial decisions, but in recent years the greatly increasing citation of former decisions by the courts with a visible reluctance to depart from them has made the difference in practice between the Continental and the Anglo-American systems one of degree only. Similarly, judicial precedents in international law have great weight as authorities, especially where rendered by nationally impartial tribunals composed of recognized experts in the subject. Precedents of this character, however, cover far less of the field of international law, particularly in regard to the practices of war, than they do of municipal law. Such precedents, whether of international or of municipal law, are subject to the same limitation as those of customary law explained in the preceding paragraph: they make law only for succeeding cases whose essential facts are so little different that no substantial reasons can be given for their being governed by a different policy. The courts in deciding cases can exercise no general power of abstract lawmaking for the future. Such power, under modern conceptions, is reserved for legislative processes only. The courts do, of course, truly make law (despite fictions to the contrary), but they do so only as incidental to their judicial function of deciding actual controversies, and have no power to lay down binding rules beyond the fair necessities of the case at hand.[2] Otherwise the distinction between legislative and judicial lawmaking is blurred or disappears. Moreover, judicial lawmaking (it is thought) is necessarily retroactive, as it must apply to controversies originating in the past rules presently deduced or evolved as applicable to such controversies,

[2] We are not concerned here with the power of courts to make rules of procedure for the future, a function truly legislative in its nature but which for various reasons of history, convenience, and policy may be exercised by judicial tribunals.

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and this affords another reason for limiting its scope. So runs the reasoning of our Anglo-American lawyers, which, whatever may be thought of its cogency, commands well-nigh universal professional assent.

Professional opinion is a source of law of much less importance in Anglo-American usage than upon the continent of Europe. There the opinions of academic jurists (especially where they agree, which, however, appears seldom to be the case) are given great weight upon doubtful questions by the courts. Upon a few topics, like procedure and conveyancing, where public policy is ordinarily of less importance than professional custom, our courts have often deferred to expert opinion, and in other fields a few text-writers of unusual merit or reputation have exercised considerable influence, but in the main it is exceptional for the decisions of English or American courts avowedly to be based upon non-judicial opinion. Doubtless such opinion has always had more influence than has been judicially admitted. In the field of international law expert opinion has played a larger part than it has in the common law, partly on account of the influence of the civil law countries which have participated in the work, and partly because actual custom and precedents have left so many questions unsettled and without means of authoritative settlement. This latter circumstance has also greatly increased the range of plausible conjecture by experts. Important questions of municipal law are almost certain to be forced into the courts soon after they arise, and a decision one way or the other tends to clear the air of the defeated theories, for no one can long seriously maintain that the law is something which the courts are patently deciding in actual controversies that it is not. But, in the absence of any internationally binding authority upon many important questions of international law, rival experts may announce and adhere to the most conflicting theories with the greatest confidence and pertinacity. Moreover, it is natural and common to find experts influenced by the interests of their own countries. The consensus of

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English opinion, for instance, regarding the pressure that may properly be exerted by sea-power, is quite different from that of German or American opinion. Expert opinion, therefore, though undoubtedly a valuable source of international law over a wide range of topics, is to be accepted with a good deal of reserve where it has not yet been actually adopted in practice.

Public policy as a source of law remains to be briefly considered. In municipal law cases occasionally arise containing factors so novel that they are not fairly covered by any existing statute, custom, or judicial precedent, and about which there is no consensus of professional opinion, or, if such an opinion exists, there are also substantial arguments the other way. Such cases are decided by courts according to what they think are the best interests of the community, expressed in some appropriate principle and limited in its future application as explained in the paragraph above discussing judicial precedents. Where analogies exist, as is usually the case in any developed system of jurisprudence, they are frequently referred to as precedents, so that the decision is often ostensibly based upon established principles instead of appearing in its true light as a new rule of law. This is due to the lingering persistence of the historical fiction that judges never make law but only bring to light pre-existing rules of law, to judicial reluctance openly to assume the responsibility of lawmaking forced upon courts by the necessity of deciding according to some rule all cases brought before them, and often to the genuine difficulty of deciding when there are elements of sufficient novelty in a case properly to take it outside the binding force of existing precedents. Once the new decision is made, however, and the new principle declared, succeeding judges usually do not hesitate to admit its novelty and to comment upon the circumstances of its adoption.

Similarly, new circumstances produce new rules of international law, however much this may be masked or denied by an insistence upon old analogies. Owing to the fact

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that in international affairs there is no common arbiter to which controversies may at once be referred for a decision that will be enforced, changes in international law wear at first an appearance of lawlessness foreign to equally important changes in municipal law. And yet in its essence the situations are very similar. An individual, deeming some invention or altered social need or custom to have rendered inapplicable to his situation some existing rule of law, so acts as to invade the rights of another as they would have been before the invention or social change, and, when sued, accepts the challenge and fights the matter out in the courts, which may finally decide for or against his contention. He ventures the experiment, however, in advance of any authoritative change of rule, and by his venture itself raises the question of a change and perhaps succeeds in securing it. In international matters a nation may do the same—but, owing to the lack of compulsory tribunals for the decision of such controversies, years or even generations may elapse before it can be said that the proposed change has become effective or has been defeated. For instance, the so-called "rule of 1756," involving the question of the right of a belligerent in time of war to throw freely open to neutrals a right to trade between its unblockaded ports not open to neutrals in time of peace, is still internationally unsettled after one hundred and fifty years, and at the Conference of London in 1909 it was impossible to secure any agreement upon the point between the principal maritime nations of the world. To those who disagree with a proposed innovation, the individual or nation seeking to establish it appears arbitrary and lawless, but the real condemnation or vindication of such experiments must rest with the result. If finally sanctioned by the courts or by international practice or acquiescence, the attendant uncertainty and controversy must be treated as the birth-pangs of the new rule.

Now let us apply these generalizations regarding the sources of law to two of the great questions of interest to America raised by the present war: the German submarine

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warfare, and the British interdiction of sea-borne neutral commerce with Germany.

Before the invention of the submarine there was a general consensus of opinion and of past practice to the effect that enemy merchant vessels should not be sunk if they could be taken to port by their captors, and that their crews and passengers should be saved upon surrendering. There was a dispute as to whether neutral carriers of contraband might be sunk at all or not, before being brought to a prize court, but their crews and passengers were of course to be saved. Two questions were really raised by the German submarine campaign: (1) Are the conditions of modern warfare so different from those of the past that substantial reasons can be given for the non-application to them of the old rules as a matter of binding precedent? (2) Assuming that the submarine question has sufficiently novel elements to free it from being governed solely by past precedents, how should it be fairly decided as a new question?

Addressing ourselves to the first of these questions as it presented itself in the spring of 1914, it may be remarked that the rules which limit a belligerent in the conduct of military operations represent a compromise between the demands of humanity or of neutral interests and those of military efficiency, and that in general the line is drawn at a point which does not under normal or typical conditions represent any serious sacrifice of the effectiveness of military operations. The older rules of naval warfare in question illustrate this. Before the advent of the submarine, one or the other of two belligerents was usually speedily driven from the sea, so that, although an occasional raiding cruiser of the weaker party might have operated a little more effectively if it could have sunk a few enemy merchantmen without caring for their crews, yet such raids would have had no appreciable effect upon the outcome of the war. Moreover, when these rules gained acquiescence, ships were of wood and did not sink rapidly even when vitally hit, no merchantman could seriously endanger an armed assailant, the attacking vessel could

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accommodate captured merchantmen crews and could stand by for some time to take them on board without risk from wireless calls for help, all ships were slow, and it was unusual for any large or decisive amount of munitions of war to be carried by sea from neutrals to belligerents. The observance of the older rules, therefore, never operated to deprive one belligerent of any really important military advantage which their violation might have given him.

At the beginning of the German submarine campaign, every one of the considerations just mentioned had apparently ceased to exist. It looked as if the submarine could not be driven from the waters most frequented by British shipping, and as if its operations there might be of tremendous military significance. Merchant vessels were commonly of steel and sunk rapidly when torpedoed. The submarine was slow, weak defensively, and could easily be destroyed by a light rapid-fire gun on a merchantman, or by ramming if it came to close quarters. Wireless calls could summon help from fast vessels over a wide area. And finally, in a war that gave every evidence of being won by the possession of superior quantities of munitions, preparations were under way to ship from America enormous amounts of war material to the Allies. Moreover, the Germans had at least plausible grounds for claiming a violation of the older rules by the British orders forbidding food to be shipped to German civilians through neutral ports, and their submarine campaign was in part sought to be justified as a retaliation for this. Disregarding the latter element, however, could it not fairly be said that the balance of neutral and military needs and advantages had been so much changed by the physical conditions of twentieth century warfare that the older rules had not the force of binding precedents, and that the entire situation ought to be reconsidered in order to formulate a new rule fair to all interests under the new conditions?

Various analogous cases suggest themselves as illustrations. In the field of the common law, for instance, no general principle has been better settled for hundreds of

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years than the right of a landowner to exclude physical intrusions into his space, whether above or below the surface of the ground, or to forbid the causing of disturbances there injurious to his own operations. Yet when the case arose of a strong electric trolley current interfering with a weak telephone current underground, in an effort on the part of each to use the earth for part of its circuit, it was held that each must protect itself and that the circumstance that the interference took place under ground appropriated to the use of the telephone company did not affect the matter. The nature of the right in question—the use of the earth for a return current—was so novel and the policy of making it a common privilege was so strong that none of the numerous analogies of the ordinarily highly privileged right of land ownership were thought applicable. No part of the older law was overruled to reach this result. It was simply not a precedent for the new situation, which called for a new rule. Similarly, there is probably no doubt that a landowner to-day would be powerless to recover for the trespass of airships in his space high above the earth, despite the oft quoted maxim that he is owner not only *usque ad Orcum* but *usque ad coelum*. For several generations the law has disabled a creditor from holding a surety after giving time to the principal debtor without the surety's assent, but these decisions have recently been held inapplicable to the modern surety company which makes a *business* of suretyship. The early law of marine insurance required the insured voluntarily to divulge all material facts known to him about the risk, but when fire and life insurance later arose this rule was held inapplicable to situations so different, though subject to a similar contract. Nor are like illustrations wanting in the field of international law itself. Before the Russo-Japanese war expert opinion was quite unanimous that a belligerent could not take measures which would imperil innocent neutral commerce on the high seas, and the mines which were freely used in that war on the open seas met unsparing condemnation from the commentators. Both belligerents,

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however, refused to pay for any damage done to innocent neutral shipping by these engines, and when, in Convention VIII dealing with the subject, an attempt was made to have them forbidden at the Hague Conference of 1907, it was impossible to muster a majority against their use on the high seas, so convinced were the weak naval nations of their utility and economy. What a peace conference, dealing with the subject matter, will not forbid, can scarcely be considered contrary to international law.

It might well be thought, therefore, that, in insisting upon a more unrestricted use of the submarine than of the former commerce-destroying cruiser, Germany was not really violating established principles but was denying their applicability to so novel a situation and was seeking the establishment of new principles for the latter.[3] Granting, then, that the question was entitled to examination *de novo*, was the suggested German solution a fair one? Was the *Lusitania* entitled to no different treatment than a freighter loaded with munitions? Were both or was either properly subject to being torpedoed without notice?

The final answer to these questions must be pragmatic, so long as wars continue. If the submarine finally proves an invincible foe of a strong above-seas naval power, and if the military advantages it would otherwise give cannot ordinarily be obtained under the rules that have restricted cruiser attacks upon commerce, it is fairly certain that a new set of rules will be evolved adapted to the needs of this new arm. At present it seems likely that no sweeping modifications of the older rules will prove necessary. Experience and the progress of invention have very much altered the aspect of the essential facts as they appeared in February, 1914. The use of various ingenious devices apparently will enable a vigilant adversary to keep its waters nearly free from submarines—they are not invincible. The submarine has been improved. It is faster now

[3] It may be mentioned parenthetically that the official presentation of the German case left much to be desired both in form and substance. In places it was extraordinarily tactless and stupid.

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than the ordinary ship and can overtake a vessel that flees when ordered to stop. It is equipped with guns capable of shell-fire that will sink or disable a merchantman, and with wireless apparatus by which it can hail an enemy at a safe distance. Thus a year's experience has both greatly reduced the prospective advantages of submarine warfare and has rendered it easier for the submarine to secure the fruits of a successful surprise without excessive risk to itself or to non-combatants. It could not to-day be seriously contended that such an exploit as the unwarned sinking of a great passenger liner would in any ordinary case be necessary to assure its capture by a submarine, and the extraordinary cases are too few to be of real military significance. However arguable may be the necessity of subordinating considerations of humanity and of neutral interests to measures of vital or serious military importance to a belligerent, it must be admitted that short of this the former should be paramount.[4] This is the basis of the whole structure of the law of war. Doubtless a submarine must be allowed to sink captures, and to compel those on board to take to boats (at least where this may be done with a fair chance of safety), but the present state of invention and experience gives no warrant for greater liberties. Indeed, it might forcibly be urged that, in the absence of a cargo containing substantial quantities of munitions (or perhaps of absolute contraband, if this be not defined too widely), a submarine should not be allowed to sink a liner when this would expose large numbers of innocent passengers to substantial peril in small boats. The modern growth of oceanic passenger service is entitled to be taken into account in striking that balance of conflicting interests which is the basis of law.

[4] Measured by such a test the various Zeppelin raids upon England seem wholly unjustifiable. No sane person could claim for them any real military significance except as an act of terrorism, and, even admitting terrorism to be a justifiable expedient where there is some likelihood of its producing a military advantage, if this war has proven anything it is that civilized men under arms cannot be terrorized. Children and barbarians may be successfully frightened by unfamiliar noise and destruction, but not men disciplined by modern civilization.

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How stand the sweeping interferences of Great Britain with neutral commerce in the war? Are they plain violations of undisputed rules, or may they too be justified, at least tentatively, as efforts to secure new rules adapted to a situation too novel to be really governed by the older precedents?

During the last two hundred years the doctrines of "blockade" and of "contraband" had been rather fully worked out. A port or coast was legally blockaded when so guarded by enemy vessels as to render ingress or egress by sea impossible without grave danger of capture. A blockade gave the right to stop all sea-borne commerce of every description and to capture all vessels trying to evade it. In the eighteenth century it was thought the blockading vessels had to be so near together that there was risk from cannon fire in passing between them, but this rule was gradually relaxed until, after the introduction of steam, it was admitted a valid blockade might be maintained by vessels usually out of sight of land and of each other. The federal blockade of the southern states during the Civil War was thus maintained. But blockading operations by a squadron a few miles below the horizon constitute to-day a "close blockade," and the military inventions of the past fifteen years have made such blockades things of the past. Submarines, mines, destroyers, airships, and wireless telegraphy have rendered impracticable any blockade save at great distances by a naval force adequately opposed by these modern weapons.

The configuration of the North Sea, however, is admirably suited to a distant blockade of German ports. The strait of Dover may be sealed and the gap between Norway and Scotland readily closed by cruisers in constant wireless communication. Absolutely to forbid all passage, however, would bottle up the commerce of the neutral states of Norway, Sweden, Holland, and Denmark, as well as of Germany, and the international legality of this is denied. To blockade only against commerce actually bound for German ports would be of little avail, as the

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cargoes would be consigned to an adjoining neutral state and then transhipped to Germany, and British and American decisions agree that no breach of blockade can be committed save by goods destined to enter enemy territory through the blockaded approach. No formal blockade of German ports has therefore been declared or is likely.

The doctrine of contraband entitles a belligerent to stop neutral commerce in certain articles bound for an enemy port even though there is no blockade. For this purpose three classes of articles have long been recognized: (1) Absolute contraband—those of use only or chiefly for war, like munitions, armed ships, and the like; (2) Conditional contraband—those largely used in both war and peace, like food, horses, money, and clothing; (3) Free—those never directly used for military purposes. Absolute contraband can be seized at sea under all circumstances; conditional contraband when it is actually destined for military use or consigned to the enemy government; and free goods may not be seized at all, in the absence of a blockade.

Various controversies have arisen in the past. One of the most notable was during our Civil War over the status of contraband shipped from neutral European ports to a neutral port in the Bahamas, there to be transhipped to Confederate ports. Was the contraband subject to seizure by the United States while passing between the two neutral ports? Our courts decided that it was, contrary to the prevailing opinion of European experts, and this view has since been generally adopted in practice by belligerent governments, though professional opinion has always been much divided upon the question. Our courts also held that neutrals goods ultimately destined to a blockaded port might be seized for attempted breach of blockade while in transit between two neutral ports prior to the actual attempt to elude the blockading squadron. These extensions of the doctrine of "continuous voyage" were bitterly criticised by neutral shippers at the time but were rigorously enforced by our fleet and courts, and after consideration

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the British government refused to protest on behalf of its shippers, thinking the doctrine advantageous to a strong naval power. The stoppage of absolute or conditional contraband bound for Germany via a neutral European port is of course justified under these decisions.

But Great Britain has gone much further than this. She has greatly enlarged the list of absolutely contraband articles by including staples like food, oil, copper, rubber, and cotton, which normally minister largely to civilian as well as to military needs; and finally she has forbidden all neutral trade with Germany by sea, even through neutral ports, by ordering the seizure of all goods of German origin, destination, or ownership, of no matter how innocent a character, if purchased after a certain date. Such goods, however, are not confiscated, which is the ordinary fate of contraband, but are to be detained until the close of the war or until other orders for their disposition are made by the government.

The original food order was justified by the British government on the ground that the seizure or control by the German government of foodstuffs virtually caused all grain going to Germany to be really consigned to the government, in which case it was properly treated as absolute contraband. The other additions to the list of contraband have been defended on account of their paramount military importance, despite their concurrent civilian use. In the case of a war not seriously threatening the vital supplies of a nation, the distinction is rational between the military importance of a cargo of flour or copper consigned to the German military authorities and one consigned to merchants in Berlin for sale to civilians; but, if we assume so great a shortage of provisions or metal in Germany that a diminution of imports for civilian use will substantially affect the amount available for military use, which of course eventually must come from the common stock of the country if direct military imports are cut off, we can understand that the interdiction of civilian imports will have a marked military effect in a war of some duration.

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Moreover, when an entire country is mobilized for war as are France and Germany, the whole able-bodied male population subject to military service, and every energy of industry and transportation subordinated to military ends, a very different situation is presented from the wars of the past two hundred years when no such masses of men were under arms supported by the centralized energy of powerful nations. It is not easy to say that practically the entire population is not contributing to the efficiency of military operations, and so may not be proceeded against as by an enormous siege; and if supplies may be lawfully kept from entering German ports, ought the rule in good sense to be different when they are shipped to Germany through a place that by geography and business usage is a German port though actually located in Holland? On the other hand it may forcibly be urged that if Germany is deprived of the advantage of using Dutch ports as bases of hostile operation against England, because they are in neutral territory, it is not fair to deprive her of the incidental benefits of this neutrality by virtually blockading them against supplies for Germany. On the whole it may well be thought that the triumphs of modern chemistry and the needs of modern warfare justify considerable additions to former lists of absolute contraband, and that the rule of the future is likely to be that any article may be so classified which is of great military importance and not also indispensable to civilian needs. This would legalize present British practice as to contraband except in the case of food, which, as stated above, is at least ostensibly defended upon another ground, though the German government has offered to let imported food be distributed to civilians without governmental intervention. It may be doubted whether the right to stop civilian food supplies entering neutral ports will find a permanent place in the revised international codes of the future.

The more sweeping British order cutting off all neutral trade intercourse with Germany even through neutral

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ports purports to be issued as an act of retaliation against various alleged international offences of Germany. The right of a belligerent to retaliate in such a manner as to prejudice neutrals as well as his adversary is a controverted one, and the arguments are by no means all on one side despite the recent very able presentation of the American case upon this point. Suppose, for instance, it were admittedly illegal for belligerent A to destroy the cargoes of ships of neutral X bearing food to civilians of belligerent B, but suppose A constantly did this, and neutral X could not or would not effectively restrain A's misconduct. Is B obliged to suffer this continuing disadvantage, due to the misconduct of A and the passivity or powerlessness of X, without retaliation, or may B similarly interfere with X's shipments to A, at least without further liability than the payment to neutral shippers for the cargoes thus seized? Surely such an argument cannot be dismissed as without reasonable basis, whether it ultimately prevails or not. How far such retaliation may go, however, as regards neutrals, and what relation it should bear to the offence against which it is aimed, are questions of great difficulty to which at present no definite answer can be given with any assurance.

May the British order, however, be justified upon the more general ground that under modern conditions national finances are of such great military importance that a belligerent's overseas trade may be totally destroyed in order to cripple its pecuniary resources? There is not a little suspicion that this is the real motive of the British policy, and of course it is intelligible enough. If cotton, under present conditions, is so important an element in equipping an army with explosives that it may properly be declared absolute contraband despite its widespread civilian use for other purposes, why may not the whole foreign trade of a belligerent be likewise proscribed to cut off the business profits which will enable it for a longer period to maintain that army as a military weapon, espe-

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cially in a war of such magnitude that it is patently a contest of resources and endurance? In the only previous analogous situation of modern times, the Napoleonic wars, this weapon was used, and its effectiveness was undoubted, as was its hardship on neutrals. More or less academic commentators have since generally agreed that such practices were illegal, but what was actually done then in a world struggle and proved effective is its own potent argument for doing again in a like contest. If we admit the legitimacy of the argument of effectiveness, and it is futile to deny its great weight in practice, the strongest objection to this bold position must be that in this particular struggle the profits from German non-contraband sea-borne trade are little likely to tip the scale one way or the other. No matter what its resources, Germany cannot get by sea what it most needs, for such articles are all on the present contraband list, and most of them it cannot get from its neutral neighbors by land because they cannot or dare not spare them. The profits it would make from non-contraband trade by sea are a drop in the bucket compared to the present enormous expenditures, and such profits could not buy any vital necessity which Germany cannot now use if it wills. To forbid dyestuffs and toys from coming to America and harvesting machinery from going to Germany seems far more vexatious than productive of any real military result. Except as a retaliatory measure it appears to wear the guise of an act of commercial terrorism unwarranted by even the changed conditions of the twentieth century.

This mode of examining two of the questions raised by the war may readily be extended to many others, and in a large proportion of them there will be found elements of such novelty as readily to distinguish them from the older cases relied upon as precedents. Viewed in the light of history and of the nature of the process of unwritten law-making, the present controversies do not so much evince a disregard for existing international law as they do the

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need for new rules to meet novel situations, and the struggle to fashion them has the deepest interest for those who realize how much of our law has thus slowly emerged from the pressure and conflict of contending social forces.

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NEUTRALITY AND INTERNATIONAL LAW.

AMOS S. HERSHEY.

THE gigantic attempt now being made by the Teutonic Powers of Central Europe to secure more "elbow room" through the use of stupendous military force raises some important problems in international relations. Among these problems is that of determining, if possible, the degree of the flexibility or rigidity of international law under the circumstances of this war. Should neutral powers, in their interpretation of the law of nations, acquiesce in German methods of warfare? What stand should neutral states take in the face of the efforts of the belligerent powers to override or change the existing rules of international law? For example, should they admit the plea of military necessity entered by Germany in justification of her violation of Belgian neutrality? Should neutral states have protested against the military policy of "frightfulness" practiced by German armies during the invasion of Belgium and France? Could the United States admit such claims as that of Great Britain to strain the existing law of contraband and blockade or the German effort to ignore the old and well-established rights of visit and search at sea? Were we obliged, at the behest of the central powers, to yield the right, sanctioned by existing law and custom, of selling war munitions to the allies?

In order to discuss these questions intelligibly, it seems necessary first to come to some decision as to the origin, nature, and purpose of the law of nations, as also to form some idea of the relation between international law and such kindred subjects as international ethics, international comity, and international policy or diplomacy.

For the sake of clearness, let us attempt to define and explain these terms.

International law is that body of principles, rules, and

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customs which are binding upon the members of the international community of states in their relations with one another. It is the common and conventional law of nations based partly on treaties or express agreements, but mainly on tacit consent and a more or less conscious imitation or following of precedents. The common or customary law of nations is no less binding than are the conventional sections of international law. It forms the older and intrinsically the more important part of the subject, and it is more deeply rooted in the habits, sentiments, and interests of mankind. Much of customary international law may be said to have the double sanction of long-established usage and treaties. Such general treaties or world agreements as the Declaration of Paris of 1856 and the Hague Convention of 1899 and 1907 may even be said to constitute a species of international legislation.

International morality deals with the principles which *should* govern international relations from the higher standpoint of conscience, justice, or humanity. Without certain standards of international morality, international law could not exist, and many of its principles (as *e.g.*, respect for treaties, which may be deemed at once a moral and legal obligation) are conditions essential to stable and friendly international intercourse. Although the law of nations is based largely upon a sense of justice and equity, international morality is by no means identical with international law; for the law of nations fails to condemn certain practices and principles (as *e.g.*, the right of conquest) which are clearly at variance with proper standards of justice and humanity, and it includes many rules (such as those governing neutral rights and duties) which originated in interest or utility rather than in morality.

International comity relates to those rules of courtesy, etiquette, or good-will which are or should be observed by governments in their dealings with one another on grounds of convenience, honor, or reciprocity. Such are, for example, the extradition of criminals in the absence of

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extradition treaties; the observance of certain diplomatic forms and ceremonies; and the faith or credit given in one state to the public acts, records, and judicial proceedings of another state.

International policy or diplomacy in the wider sense relates to objects of national or international policy and the conduct of foreign affairs or international relations. Diplomacy is usually based upon considerations of expediency or national interest rather than upon those of morality, humanity, or justice. Though its aims and methods are seldom confessedly illegal or immoral, it must be admitted that in times past its conduct has been frequently animated by the spirit of Machiavelli rather than by that of Grotius, *i.e.*, it has been governed by ideals based upon interest rather than upon a sense of justice. It is not sufficiently realized that the law of nations occupies a relatively small section within the wide circle of international relations. It only occupies that portion which has been reduced to positive rules and regulations. Beyond the well-cultivated field of international law there still lie vast and but partially explored regions where motives of interest and expediency prevail rather than ideals of law, justice or morality. In these regions of international policy or diplomacy, statesmen, acting in the supposed interest of the nation, exercise a wider discretion and feel themselves less bound by legal checks and moral standards than within the much narrower circle limited by definite rules or binding customs. The frequent abuse of this freedom is one of the causes of the war.

Let us now examine a little more closely the nature, purpose, and fundamental basis of international law.

We shall assume that the guiding motive or purpose of international law, as of international relations in general, is or should be the satisfaction of collective needs and interests. Social utility or adaptability to group interests and inter-groupal relations are or should be the final test of the rules governing international relations.

Like the state itself, international law is ultimately based

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upon the innate or inherited sociability of human nature directed by specific human needs and group interests. Man, though he be a fighting animal almost constantly engaged in a desperate struggle for existence with his environment and often at war with his fellows, is also a social and political being who has long since learned that mutual aid or co-operation and organization are at least as essential to human well-being as are struggle, rivalry, and competition.

Ever since their first appearance upon this planet, men have apparently lived not in isolation, but in more or less hostile or friendly groups which have formed ever-widening circles (families, hordes, clans, village communities, cities, states, nations, confederacies, etc.) within which the practice of mutual aid or co-operation has largely supplanted, or at least modified, the habit of struggle and rivalry. This habit or practice of co-operation within groups was gradually extended to inter-groupal relations, until it now includes all civilized states, races, and nations, and appears to be entering upon its final stage of world organization.

In international relations this solidarity or interdependence of interests, based on a human need for co-operation and organization, has stimulated the growth of customs based largely on precedent and has led to the formulation of rules and agreements which have as their purpose the maintenance of durable communal interests and peaceful intercourse even in time of war. It has given rise in modern times to the conception of a community, family, or society of states, the members of which, while retaining a certain degree of so-called sovereignty or independence, are legally and morally bound to observe certain rules, customs, and principles of international intercourse.

True it is that the rules of international law are sometimes vague, ambiguous, or doubtful; that they are variously interpreted at different times and in divers places; and that their enforcement lacks a certain sanction which is present in the case of municipal or state law. It is also true, as already stated, that the law of nations only attempts

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to regulate a relatively small section within the wide circle of international intercourse. It does not, for example, try to regulate international trade, and within the broad circle of international policy or diplomacy, there are untraversed regions, where statesmen are free to exercise a large discretionary power.

One such unexplored region is that surrounding the law of neutrality or the domain of neutral rights and obligations.

Neutrality has been defined as "the condition of those states which in time of war take no part in the contest, but continue pacific intercourse with the belligerents." It consists in certain fairly well-defined rights and obligations. These prescribe total abstention from certain acts (such as the sale of warships or the fitting and sending out of military expeditions); the observance of a formal impartiality in cases where indirect assistance is permissible (as in that of the sale of munitions and war supplies); and the toleration by neutrals of the exercise of certain belligerent rights (such as the exercise of the rights of visit and search and of capture under certain circumstances).

In the eyes of the international jurist, neutrality is a status or condition and consists in the observance of the law of neutrality. This law is composed of certain rules and regulations which are, historically speaking, largely the result of precedents and of a series of virtual compromises between the conflicting interests of neutrals and belligerents. From the standpoint of the jurist, the conception of "benevolent" neutrality is a manifest absurdity or contradiction in terms.

From a common sense point of view, however, a neutrality which permits a country like the United States, while debarred from trade with Germany, to be made an important base of supplies to the allies during this war is either no neutrality at all or a neutrality which is highly benevolent to the allied cause at least in its effects, if not in intention.

No government has perhaps ever made a more sincere

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attempt to be "neutral" than has that of the United States during this war. The neutrality of Germany during the Russo-Japanese War was confessedly benevolent towards Russia. But the United States government has been perhaps excessively rigid in its observance of neutral obligations, though less stern in its insistence upon its rights. Why then this impression shared by many who are not pro-German in their sympathies that our conduct has been unneutral?

Is it not because the popular idea of neutrality is much broader and more comprehensive than the legal conception thereof? The popular idea seems to imply an attitude of indifference and isolation involving a total abstention from acts which might be of material assistance to either side; or else a non-committal attitude of impartiality which would make the impossible attempt to hold even the balance of indirect assistance between the opposing belligerents.

In the first place it should be made clear that we are under no obligation to remain neutral in this or any other war. As an independent state, we have a right to declare our neutrality and to have our neutral and sovereign rights respected by the belligerents. They in turn may require from us the correct fulfillment of our neutral duties, as laid down in the law of neutrality.

Whether we shall decide to act the part of neutral or belligerent is a matter of policy like any other question which should be decided primarily from the standpoint of what we deem to be our essential and permanent interests. These interests we believe to be coincident with those of humanity at large.

If we decide to remain neutral, we still have the right to act in accordance with our conception of our own vital interests and from humanitarian or moral motives outside the immediate sphere of our legal obligations. So, for example, after an impartial investigation, we might well have protested against the atrocities in Belgium and France and we might well protest against the senseless Zeppelin

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raids or war on non-combatants which Germany is waging in England. Were American citizens killed or seriously injured in these murderous nocturnal expeditions, we should probably feel obliged to do so.

Our right to furnish munitions of war for delivery to any of the belligerents is too well established to deserve discussion in these columns. It has the sanction of a Hague Convention as well as of long-continued and well-established custom, and the Austrian note of protest on this subject was nothing less than a piece of impudence which met the answer it deserved. Whether we should have the right to place an embargo on this trade during the present war, except as an act of reprisal, may be open to question, but the safer and wiser policy would seem to be to continue in the exercise of our undoubted rights. In addition to war loans, it is the most effective way in which we may assist the cause of liberty, justice, and humanity without violating the law of neutrality.

The plea of military necessity entered by Germany in justification of the violation of Belgian neutrality is one that must be resisted at all hazards. Were it admitted, all neutral and treaty rights would be insecure, and the very foundations upon which rest stable and peaceful international relations—the independence of states and respect for treaties—would be undermined. Yet, we were not legally bound to protest against this brutal action of Germany's at the outset of the war, though it is one of the things which should make us extremely cautious and wary in our dealings with her in the future.

To what extent may international law be changed or modified by belligerents in the pursuit of victory? Or to what degree may the discovery or invention of new methods and implements of warfare necessitate a modification of existing usage or custom?

Here it is perhaps well to distinguish between modifications in the application of existing rules and changes in fundamental usages or principles. Additions to the list of contraband are within the formal rights of the belligerents,

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provided neutral powers are duly notified. Modifications of conditions under which great ocean steamers may be visited and searched by taking them into port are a source of considerable delay, expense, and annoyance to neutrals, but they are not necessarily a violation of fundamental rights.

Great Britain's straining of the law of contraband, blockade, and continuous voyage in some respects may be "illegal, indefensible, and ineffective," but such innovations are largely the logical and perhaps necessary development and extension of previously existing principles and practices. We do well to support our views by long and labored arguments and to protest against all practices which we regard as unfair or illegal. But as a possible future belligerent and certainly as a growing sea power with an ever-increasing navy and an extensive sea-coast which could hardly be effectively blockaded even by the methods employed by Great Britain, it might be wise for us to sanction at least some of these innovations.

The above considerations do not apply to that portion of the British argument which seeks to justify such and similar practices on grounds of mere expediency or as reprisals. The expediency of one nation cannot be regarded as a guide for another, and reprisals which injuriously affect neutrals can never be regarded by them as justifiable.

Quite otherwise stands the case against Germany. In the case of the *Lusitania* and the other merchantmen torpedoed without warning by German submarines, our rights are unquestionable and unimpeachable. American citizens and other non-combatants were massacred while on board common carriers engaged in lawful voyages on the high seas—the common highway of nations. The rights of these carriers were not, however, absolute. They were subject to the belligerent rights of visit, search, and capture; and, under the circumstances in which Germany finds herself—being unable to take her prizes to a safe port—they were even subject to destruction, provided the ship's passengers, crew, and papers were saved.

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In submarining these vessels without warning and thus imperiling the lives of non-combatants, Germany committed not only an unpardonable offense against the law of nations, but a hideous crime against humanity. In these cases she did not even attempt to exercise the duty of visit and search—one of the oldest and best established customs of the modern law of nations. She did not merely modify or extend the scope of existing rules and regulations, as has been done by Great Britain in her new applications of the law of contraband, blockade, and continuous voyage, but she wholly ignored a fundamental principle of international law. It is almost on a par with her violation of the neutrality and independence of Belgium. Besides this, there are involved in these violations important questions of international ethics.

In view of Germany's attitude toward considerations of law, justice, and humanity, it is a question of international ethics, whether the United States, as the leading neutral state, should not long since have declared Germany an international outlaw and refused further converse with her. But, having chosen to remain neutral, we have a right to consult our own interests which in this case are identical with those of humanity-at-large; and, while preserving a rigid attitude toward her of cold and formal neutrality, render to the allies all the assistance permissible outside the narrow limits of the law.

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HUMAN NATURE AND THE STATE.

HAROLD CHAPMAN BROWN.

SINCE the oldest of our philosophic traditions, the form of the state has always been understood as a consequence of human nature. Whether we look at Plato harmonizing its elements to exhibit that large-scale justice which is to furnish a mirror to the soul of man, at Aristotle adapting the different forms of polity to the needs of race or environment, at the Roman founding the *jus naturale*, or at Hobbes guarding against the innate depravity of man that the church had discovered, it is everywhere human nature and its needs that is in question. But human nature has not always been understood in the same fashion, and of late years we have been under the domination of an idealism, not without suggestiveness, perhaps, which has read nature after the analogy of man and substituted for a naturalistic history, a teleology, astounding in its blind optimism and manifesting an ever-increasing sterility when mated with the practical problems of social life. But while human nature has been thus extended to cosmic process and become something less than human, by tortuous ways of scientific progress verifiable knowledge has been accumulating and we are now in a position, as never before, to see through the glass, although still darkly, and in the light that penetrates to us to revise once more our conception of the nature and function of the state.

The need of such revision is everywhere apparent. Read, for example, Mr. Graham Wallas' "Human Nature and Politics," or Mr. Wells' "Social Forces in England and America," and see the complex factors in modern life that confront a state, to control or to respect, and that extend its necessary jurisdiction far beyond the limits of detail that any social contract theory or metaphysical

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conception of man ever dreamed. And even the problems of tradition, when they have survived, have not escaped transformation. We can no longer represent man by egoistic instincts, as seeking his own gain at the least expenditure of effort, as seeking pleasure and avoiding pain, or even as a rational animal, for he is each of these things and their opposites and more than these things. Precisely what, we must turn to the psychologists to find out.

The acts that can be ascribed to the original nature of man are curiously simple compared with the complex lines of conduct that are built up from them but it will be not without profit to note briefly these simple acts, before we turn to the more complex behavior that is the chief material for our conclusions. Professor Thorndike writes: "Any man possesses at the very start of his life—that is, at the moment when the ovum and spermatozoon which are to produce him have united—numerous well-defined tendencies to future behavior. Between the situations which he will meet and the responses which he will make to them, preformed bonds exist. It is already determined by the constitution of these two germs, that under certain circumstances he will see and hear and feel and act in certain ways. His intellect and morals, as well as his bodily organs and movements, are in part the consequence of the nature of the embryo in the first moment of its life. What a man is and does throughout life is a result of whatever constitution he has at the start and of all the forces that act upon it before and after birth. . . . The behavior of man in the family, in business, in the state, in religion and in every affair of life is rooted in his unlearned, original equipment of instincts and capacities. All schemes of improving human life must take account of man's original nature, most of all when their aim is to reverse or counteract it" (Educational Psychology, Vol. I, pp. 1–4).

When this original nature, however, first falls under our observation it is already somewhat modified by the

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results with which its first responses have been met and by the fact that these tendencies are usually led to cooperate in multitudinous combinations. Nor are they to be covered by the stock phrase "adaptation to environment," for in them, as well as in the forms which they take through chance education, nature is neither always right nor always wrong. Through them adaptation must come and although the statistical totality must be favorable—to quote Thorndike again—"It will be a great advantage if thought about the life of man can be advanced to a level of description which will exclude teleological lists having as their themes such mythical potencies as the 'instinct of self-preservation,' which makes you stay alive—the 'social instinct,' which makes you construct a society,—the 'parental instinct,' which makes you treat your flesh and blood so as to favor them in all ways,—the 'religious instinct,' which makes you believe in a world of spirits,—'constructiveness,' which makes you build up all sorts of edifices,—'destructiveness,' which makes you tear all sorts of edifices down,—or 'fear,' which makes you avoid danger" (*loc. cit.*, p. 15). Rather there are certain concrete situations to which individuals are sensitive and to which some form of response is made but the character of the response may well vary, even to closely similar situations, with different conditions of the responding organism.

If one were to follow the precedent set by social philosophers and write a fictitious history of political origins, he must remember that men did not first live in solitude and then come together through some impulse toward gregariousness, for all characteristics of original nature have presumably been present to a degree in him and operative through the geological epochs needed for the evolution of the man we know. Also genuinely primitive association must have been blind, without forethought of advantage to those participating. Its modes of life were crystallized into habits, transmitted by informal education and tradition from one generation to the next,

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and stamped with the effect of environmental stimulus on individual aptitudes. Gradually, however, individuals must have felt a dawning consciousness of advantages accruing to them from association especially when their native endowment and external conditions had thrust them into privileged positions, and the effort to increase those advantages that had been discovered was the first self-conscious political activity of man. Indeed all political history might be written as the effort of an ever-increasing number of individuals, who begin to see advantages to themselves in organization, to modify the social structure so that these advantages may be increased, thus tending to transform the state from an organization for the benefit of a ruler or of privileged class, to an organization for the service of all of those participating.

With such an origin the first aspect discerned in the dawning idea of a state is the idea of power, power to enforce the rulings of dominant individuals and power to protect its people from other peoples. One has only to read the advice of Frederick the Great to his nephew or the utterances of the present Kaiser to recognize how fully this idea of power is still established as the dominant character in certain modern states.

Frederick the Great writes: "My kingdom, by its nature, is military, and, shortly speaking, it is only by its assistance that you can hope to sustain and aggrandize yourself. It is necessary, therefore, that your attention should be fixed on this" (Confessions). In his "First Proclamation to the Army on the Day of His Accession," the present Kaiser said: "I would direct your gaze to my grandfather, who stands before the eyes of all of you, the glorious war lord, worthy of all honor—a spectacle more beautiful than any other. . . . So we are bound together—I and the army—so we are born for one another, and so shall we hold together indissolubly, whether, as God will, we are to have peace or storm." Or again from Frederick's Confessions: " . . . never be ashamed of making alliances, and of being yourself the only party that draws

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advantage from them. Do not commit that stupid fault of not abandoning them whenever it is to your interests so to do; and especially maintain vigorously this maxim, that stripping your neighbors is only to take away from them the means of doing you a mischief. . . . These politics may be reduced to three heads, or principles. The first, self preservation and aggrandizement, according to circumstances. Second, alliances never to be made but for one's own advantage. And the third, to make one's self respected and feared in the most difficult times. . . . When Prussia, dear nephew, shall have made her fortune, it will be time enough for her to give herself an air of fidelity to engagements and of constancy. . . . I have already told you, dear nephew, that politics and villainy are almost synonomous terms and I told you the truth. Should it be necessary to make a treaty with other powers, if we remember that we are Christians, we are undone."

This philosophy is more fully articulated than it would be in the mind of a primitive chief but it is not essentially different in form. In last analysis, the function of such a state is positive for the ruler alone. It works for his personal welfare but is negative for the populace to whom it is merely a means of warding off evils either from without or from their fellows. However, the very organization necessary for these functions leads to a transcending of the whole conception. The ruler must return favor for favor to those whose strength approaches his own and a hierarchy is created about him to the members of which, according to their station, certain advantages accrue, whence is derived the fateful intuition that a social organization may be of positive advantage to others beside its head, an intuition presented and lost, reappearing with various degrees of clearness in different epochs of human history. We recall the supreme genius of Plato in recognizing that the stability of the state could only be assured by a controlled education of its citizens and that it might be necessary to invoke the "noble lie" where it seemed

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conducive to the highest good. Fortunately for human progress, rulers, although they have rarely been afraid of lies, noble or otherwise, have not always shown the keen sense for the potency of educational control evinced by Plato.

If the state is not a premeditated affair but it has been the experience of all people to awaken gradually to the fact that they, with their fellows, have become members of some more or less organized aggregate of men, there must be much inertia of habit and custom to overcome before they can individually consider the desirability of this status or seek to modify it for the better. But no more effective stimulus could have been brought to bear upon men than the hierarchy of force with its appeal to envy, admiration, and the native hostile responses to the scorn of superiors. Add but to this the idea of the power of organization which must come, even if obscurely, from the efforts of a ruler to obtain efficient service and a social revolution is prepared. Then, once the idea that the state might be a form of organization beneficial to all is assimilated, the absolute centering of the power in the ruler, as maintained by Hobbes' hard contract theory, begins to totter. A principle like Locke's, that the will of the majority must be law, takes its place and the appeal of an oppressed people to heaven to enforce their will is sanctioned.

Comte's law of the three stages seems to find here a real exemplification. From the concept of the divine right of kings, we pass to that of a metaphysical universal will. To the German metaphysicians, perhaps to Hegel more than to any other, was it given to reinterpret political institutions as a realization of that ideal of freedom which seemed to men newly emancipated from tyrannous domination, the highest goal of life and the fullest embodiment of the moral ideal. But unfortunately the freedom was abstract and the human nature that was satisfied was not our human nature. The struggle is only commencing that may lead us to sounder positivistic thought and help us to transform the state into an institution for man as he is,

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so that he can become man as he ought to be, or at least get some further light upon the ideal defining what 'man as he ought to be' actually means.

Metaphysicians are yet far from this. Consider the formalism of Mr. Bosanquet, for example. "The state," he writes (p. 189), "as such, can only secure the performance of external actions," with the consequence "that only such acts (or omissions) should be enforced by the public powers as it is better should take place from any motive whatever than not take place at all. When, that is, we enforce an act (or omission) by law, we should be prepared to say, granting that this act, which might conceivably have come to be done from a sense of duty, now may come to be done for the most part from the fear of punishment, or from the mechanical tendency to submit to external rules (attended by the practical inconveniences of insensibility, half-heartedness, and evasion which attaches to acts so enforces), still so much depends, for the higher life of the people upon the external conditions at stake, that we think it worth while to enforce the act (or omission) though our eyes are fully open to the risk of extended automatism" (p. 194). In other words, will is conceived as dependent upon motives which are something wholly private and shut off from external influence. Analogously, the state has also its motive, to further the realization of the best life, and is primarily a will, or abstract power that can be considered wholly apart from the motive.

But this is not the worst. If individual liberty is the condition of moral action, interference of the state involves a paradox. Mr. Bosanquet recognizes this and brings his most subtle logic to extricate himself. "The promotion of morality by force is an absolute self-contradiction" (p. 192). If morality depends upon freedom how can interference with freedom be a means of attaining it? The answer made is, only if interference can be interpreted as adding positive powers, that is, as Green had already said, "Every law and institution, every external fact maintained

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by the public power, must be judged by the degree in which it sets at liberty a growth of mind and spirit." . . . The state is only in its rights when it forcibly "hinders hindrances" to the best life or common good.

We are saved from a paradox that threatened inner contradiction but at what cost to the empirical value of our philosophy? To execute a murderer may possibly be considered as to hinder a hindrance to the best life but does it set "at liberty a growth of mind and spirit"? Is it so easy to be sure that all the regulations of business that it is found expedient to impose are a genuine means to mental and spiritual growth? Perhaps all such things can be so interpreted, but the situation seems to me one peculiarly conducive to sophistry and confusion. It may be godlike to see the one in the many but I doubt the real virtue in confusing the many within the one. Before accepting such an interpretation it is worth while to look sharply at the postulates on which it is based.

In brief space, it would be impossible to examine adequately such fundamental ethical concepts as those of motive, will, and freedom. Consequently, I must appear dogmatic and present their characteristics as they appear to me, psychologically understood, and depend on empirical reference to carry my point. In the first place, only those acts can be called voluntary that are determined by ideas of their consequences. The idea in itself, however, is not a motive but may become one if it excites feeling of desirability or aversion. The act of will appears as a natural response of original human nature, as modified by education and environment, to an ideally anticipated consequence of the action. But not all actions voluntary in this sense have the attribute of moral freedom. A line of conduct may be voluntarily entered upon because any other line of conduct seems to lead to an outcome distinctly undesirable; and no one would feel free in such a situation. Practically, however, many problems have several solutions that are, or at least, seem, equally satisfying, in which case we feel free in making a choice. At last analy-

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sis we should find in all such cases that the satisfactions are not absolutely equal but at least we have here a choice worked out on the basis of selection from goods rather than avoidance of evils. But one would hardly assume a freedom of choice when the alternatives were all undesirables. In general, the less determinate of our choices we find our feeling of impulsive seeking or avoiding, the more ready we are to attribute freedom to them.

It is not unfair to ask whether freedom so understood psychologically has any peculiar value in moral and social life. The concept is often overworked but in a sense close to the old adage that "freedom is opportunity" its value remains, for a civilization is certainly more healthy when its participants may exert their energies in the effort to realize socially practicable desires rather than in the effort to avoid anticipated ills.

But to return from our excursus to the problem of state control. It might seem at first sight that Mr. Bosanquet is right in asserting that the motives of conduct lie outside of the state's power except in so far as the state can render laws effective by exciting fear of the consequences of disobeying them. However, I do not believe that this is quite true. It is a dogma in political philosophy that men are first forced to obey laws and then the prescribed line of conduct becomes a habit so that enforcement is no longer necessary except in exceptional instances. But at best this could only be true of the monarchically organized state. In a government like our own, laws aim at being rules of conduct that shall express the most expedient mode of action for everyone concerned and a successful law is obeyed primarily because the expediency has come to be recognized by those concerned. If force is behind it, its aim is primarily to restrain the unbalanced whether their fault lies in ignorance or abnormality. In other words, we hope to see our laws educative and believe that they should lead to the recognition of ideas and the establishment of genuine motives in men. The external compelling power which is the core of Mr. Bradley's and the

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absolutist's state is becoming merely its negative aspect. A political philosophy based on the above psychology must interest itself more in ideas than in will and instead of being interested in the state as the embodiment or expression of a general will, it will seek to find underlying it fundamental ideas, the source of its power and the determiners of its limitations.

The concept of a general will is the metaphysical survival of the concept of power in men's thinking. To supplant, or rather to transform the significance of it, we must introduce a different conception, perhaps that of organization. And while there is nothing new in looking upon the state as primarily an organization, yet it is true that the gradual education that men have undergone in social life has only recently led to a recognition of its supreme value and a partial appreciation of the wide range of situations in which the capacity to organize may be advantageous. To define the state as a form of organization instead of as an embodiment of a general will has that supreme significance of shifting an emphasis. There is a world of difference between the conception of man dominated by a power the aim of which is to restrict his activities for his own good, and the conception of man as member of an organization the acts of which he sanctions because of advantages that he has come to recognize may be gained by so doing.

It is no longer true that the state, as such, can control the external forms of conduct only. Mr. Bosanquet feels this empirical difficulty. "It would be an exaggeration," he writes (p. 197), "to call such external conditions as, *e. g.*, first-rate educational apparatus, mere negative conditions of the best life. . . . The difficulty springs from the fact, that the state, as using compulsion, is only one side of society, and its action is only one side of social action. . . . If first-rate educational apparatus is called into existence by a state endowment, the first-rateness of the apparatus is not due to the compulsion applied to tax-payers, which rather, so far, negatives the action of intelligent will as such, but it must be due, in one

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way or another, to the fact that first-rate ability in the way of devising apparatus was somewhere pressing for an outlet, which, by a stroke of the pickaxe, so to speak, the public power was able to provide for." But this explanation, it seems to me, is a rather severe strain on Mr. Bosanquet's concepts. The bare creation of an endowment is not the sole act of the state, for the state must also select those who are to administer it and impose limitations on their jurisdictions, and this requires intelligence. Indeed the whole difficulty seems to be rooted in a survival of the faculty psychology and the consequent effort to separate feeling, intelligence and will as independent capacities.

Once the psychological situation is understood, the state can no longer be merely "one side of society" and if there is any meaning in the signs of the times, it seems to be that the activities of the state are gradually extending themselves throughout our social life in such a fashion that it is an ever-increasing problem to distinguish between public and private affairs. If we conceive the state primarily as an organization, the question is merely as to how far the operation of an organization, unlike a great corporation only in that it depends on the voted sanction of its constituents, can operate more efficiently than relatively independent individuals and organizations independent of the voice of their constituents, and it will take time and experience in particular cases to find this out. Radical reforms are chiefly at fault in assuming *à priori* a conclusion that only experience can demonstrate.

We are in need of a new political philosophy. Through a long lapse of years, man has sought to exhibit the state as a rational institution suited to his needs, but since the days of ancient Greece he has done little more than dialectically justify the forms of institutions that his history had already brought into being. A full realization of the practical powers of intelligence is as new as the epoch of applied science, a matter of a century or so, and it was only from reflection on this achievement that man began, in the last century, to dream of the possibility of

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applying science to political control. The Leviathan is dying and in its place is arising a conception to supplant that monster state as a more rational and positive means to human welfare.

A first consequence is that the masses can no longer be looked upon as a means for the realization of a state-idea. They have become creative participators and must be educated in co-operation to fulfil that function. With the growing provinces of state control, the ancient and honorable doctrine of rights is in jeopardy. Naturally, men freed from the absolute dominion of the state of Hobbes, sought a clear definition of the extent to which the state might interfere in their affairs. The traditional rights of life, liberty and the pursuit of happiness appeared and are conserved even under Mr. Bosanquet's concept of the state having primarily the moral purpose of removing hindrances to the best life. Yet to accept them, is to involve us in a complex dialectic for the semblance of justification of our daily punitive practices, a specious need that a philosophy conceived from our point of view would have never generated.

If the state is no longer a person or a general will in any other sense than would be a self-controlled corporation, its fundamental principle must be to enable all men to profit by the special abilities of their fellow men as well as their own, and men's rights can be defined, but not specified, as just treatment in all matters, where justice appears as proper balance much as in the great Republic of Plato. But limitation on the scope of the state's practical activities can only be placed by the limitations of practical knowledge and the phase of development which human nature has attained—psychological factors that tend to render certain provinces of life best managed by individual initiative and not by collective control. But these limitations are not immutable. With greater scientific knowledge and the practical applications that follow from it, the provinces where collective action can advantageously enter may be capable of indefinite extension, and human

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nature when we pass beyond the original and naive responses of man to environment, which are of little direct social significance, may be modified almost without limitation, for even fundamental instincts can attain vicarious satisfaction or the direction of their expression be modified by the cultivation of other and conflicting instincts and by the power of new, but socially transmitted, habits.

Also the state cannot be limited to mere external forms of control. It must recognize that while these may always be necessary, they express its imperfection and incompleteness rather than the basic side of its activities. The authority of the state should become more like that of scientific experts to whom a man submits because they know more than he instead of being that of a metaphysical power enforcing a moral ideal. But such authority can be appreciated and accepted only by educated men; therefore, the first function of a state must be to ensure its citizens a sound education, a matter rendered difficult by our present economic pressure that forces most men too early into the world's work, by our lack of adequate psychology and consequent ignorance as to just what a suitable education consists in, and by the weight of traditions that often warps our present systems from their highest efficiency. A striking example of this last is that pseudo-patriotism by which so often a people's history, instead of being made a stimulus to critical thinking for ideal ends, is made a sop to their egoism, by a reading that shows their activities in peace and war as being, if not perfect, at least immensely higher than that of any other people.

Nowhere does our theory of the state present itself in greater contrast than in its consequences for the theory of punishment. Punishment is the name for certain responses to "annoyers" (cf. Thorndike, *loc. cit.*) that play a fundamental part in the life of primitive man. The oldest theory of punishment was an attempt to justify this behavior rationally as retaliation or retribution. But the more self-conscious one becomes as to the processes

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of social life, the greater the difficulty in finding a satisfactory justification for this conception. Nevertheless our metaphysicians have not failed to attempt it. By making this retaliation a reaction of a system of rights against one who shares it, we are told that punishment is a realization of the criminal's own will and Kant even taught that "though a society were about to be dissolved by agreement, the last murderer in prison must be executed before it breaks up" (Bosanquet, p. 227). It was his right to be executed. I have always felt, with the uneducated man, that this doctrine was too artificial to merit criticism. It can only be maintained on the basis of a metaphysical conception of a deeper self that is more truly the individual than the empirical self that lives and functions in the world of men, and to attempt criticism of this concept would lead us too far afield in the realm of metaphysics.

With Plato, comes the more reflective consideration of punishment as a device to make the offender good, and for this end, Plato notes, the judge and the physician must co-operate. This suggestion is so eminently sane that I can only understand the slight progress that two thousand years have made as due to the slow development of scientific medical and surgical knowledge preceding the most recent decades. When Mr. Bosanquet writes that this reformation theory "has a meaning that is unjust to the offender himself" because "it implies that his offense is merely a natural evil, like disease, and can be cured by therapeutic treatment directed to removing its causes" but "that this is to treat him not as a human being; to treat him as a 'patient,' not as an 'agent'; to exclude him from the general recognition that makes us men" (p. 222), I confess to a sense of shock for the point seems to imply that we can do nothing to make a man good. Human society sinks to a dull routine without co-operative achievement in which we can only help by not putting stumbling blocks in each others way, or by removing them if they are there.

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The difficulty lies again in the metaphysical apotheosis of will, whereas, if a man's ideas are sound empirically, we can trust his will to take care of itself. With idealistic metaphysic dropped, it is not a question of a man's being an "agent" or a "patient," for in practice every man must be both. Rather the aim is to so organize human society that man can exert control over his destiny in so far as his knowledge shall give him guidance in the realization of the most satisfying ideals he has been able to set before himself. Punishment retains then the value which established its place in human society as a means to deter men from intolerable actions and to force those so acting to mend their ways. Our real progress lies only in our knowledge as to the means that can be effectively used to this end. Capital punishment and prisons do not show the desired results and reform is in the air.

Two types of actions are to be dealt with: (1) the natural behavior of the normal human being when subjected to unduly severe economic or other pressure as a result of injustices in our economic organization, illness, hard luck or too limited or perverse education; (2) the behavior of individuals in whom certain instincts are by nature too strong or too weak and who may be classed as in some sense defectives. The great variety and subtlety of human differences make the transition from one of these groups to the other so nearly continuous that an absolute line of distinction cannot be maintained. However, in the first class of cases the prime need is some general reform of conditions that shall make the occurrence of the situation leading to the undesirable act as improbable as possible, but as such attainment is often of the nature of an Utopian dream, the practical solution lies in recourse to charitable or educational institutions. In the second case the situation is also complex. If the individual defect is slight, the fear of a penalty may effectively be invoked as preventative, but with greater defect such fear is practically useless and the reformative value of the punishment nothing at all. The rational treatment may vary from

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that of the psycho-therapist to that of the surgeon, or it may be unattainable, in which case some sort of segregation is indicated. To work out in detail such a theory would be apart from our present task.

We have tried to show that the modern state has become something of which most social philosophers have never dreamed. In the complexities of social life to-day, the old doctrines of rights which seemed so clear to the men of the French revolution has not become false but it has become to a large extent meaningless since rights for which they struggled have become commonplaces and we are interested in rights of which they never dreamed, organized labor, for example. The limit to the number of rights can only be determined through practical settlement of the limits to the efficacy of public as opposed to private control. Our greatest danger seems to lie in pseudo-knowledge. To apply knowledge we must have it, and only too often under the present rapid advance of the sciences, promise is taken for fulfilment and scientific applications are proposed where the science to be applied does not yet exist. Our attitude toward the future demands courage, not the rashness of fools, but the temperament of the wise experimenter who can make haste slowly, ever on a basis of sound knowledge.

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MORALS AND MANNERS.

G. A. JOHNSTON.

WITHIN the last few years our newspapers and periodicals have contained, with increasing frequency, references to the present-day decay of manners. That this decline in courtesy is real cannot be denied. Certainly many of its manifestations which were common a generation ago are now as extinct as the Great Auk. Nobody deeply regrets that the Great Auk is extinct. No doubt it was an interesting bird, but it was of no particular value or significance. The popular attitude towards the imminent extinction of manners is closely similar to this. Manners, it is thought, are very nice in their own way, and good for people with plenty of leisure, like *les précieuses de l'Hotel Rambouillet* and *l'entourage de Louis Quatorze*, but an anachronism in these days of "quick lunches" and "get on or get out." But on the contrary, the truth would seem to be that the decay of manners, if there be a decay, so far from being merely an episode (comic or tragic) in the drama of human history, is as serious and ominous a portent as a decline in morals. I shall try to show that the popular antithesis between morals and manners is mistaken, and that not a single principle of distinction between them is valid, and not a single line of demarcation will bear examination. Manners form a special and most important department of morals, and thus any decay of manners really amounts to moral degeneration.

This view may at first appear startling and almost paradoxical. The plain man cherishes the distinction between manners and morals. Morals, he believes, are of the heart, manners are only skin-deep. Morality is the expression of a man's inmost character, courtesy a superficial veneer. Morals are natural, manners artificial. Morals are spontaneous, manners petrified. Morals are honest and

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straightforward, manners deceitful and sinuous. The popular mind delights in such contrasts as that in "The Cloister and the Hearth" between the rough, unmannerly German who sells good shoes and the smooth, polite Frenchman who sells bad shoes.

But this sharp differentiation of morals from manners is really one of those unexamined assumptions which infect all our thinking with error. If we take any province of ordinary experience, we find that it consists of opinions adopted we know not when nor how nor why. We do not question these assumptions: often we do not understand them. They form the mental and moral *Gemeingut* of our age. It is one of the tasks of reflective thought to examine these presuppositions. Socrates with his confession of ignorance and his Maieutic Art, Descartes with his method of universal doubt—these are typical of the effort of philosophy to test on the touchstone of reflection the opinions and prejudices of ordinary experience.

Before proceeding to examine critically the popular prejudice that there is an ultimate difference between morals and manners, we may conveniently notice a preliminary objection to the view which we have suggested. Surely, it may be said, you don't deny that a good man may have bad manners, and a bad man good manners. Is it not a fact of everyday experience that the most honest men are often the most unpolished? On the other hand, it is a truism that your thorough rogue often has perfect manners. With the poets, from Virgil and Horace downwards, it is a commonplace that the city unites politeness and rascality, and the country combines boorishness and honesty. Again, everybody knows that Mr. A eats peas with a knife, but is in great demand as a trustee; while Mr. B would embezzle your money, but would be unhappy for a day if he cut you in the street. How can you, it may be said, run in the face of all this, and say that morals and manners are the same?

In reply to this popular objection, we would point out that our view implies that all manners are morals, but

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not that all morals are manners. Manners constitute a special department of morals. No man is altogether good. He may be good with reference to one department of morality and bad with reference to another. Morality involves exceedingly numerous sets of relations between persons in different circumstances and in different connections. Such is the complexity of human experience that it is often the case that a man is good in one department of morality and bad in other departments. We call a man "good" *simpliciter*, because on the whole, considering all the departments of morality, he is more good than bad. Because a man is good in the department of family-morality and bad in the department of commercial morality, nobody would dream of asserting that one of these departments ought to fall outside the realm of morality. The proper conclusion is that the man is good *qua* family-man, and bad *qua* commercial-man. So it is illogical to state that because a man may be good in some particular department of morality without being good so far as manners go, therefore manners cannot form a part of morals.

We must now pass on to investigate the grounds on which not only common sense but also reflective thought has endeavoured to distinguish between morals and manners. It is clear that the whole question of the relation of morals and manners depends on the meaning of morality. If we assert that manners fall within the realm of morality, we must state clearly what we mean by morality. What characteristics distinguish those parts of experience and those facts of life which we call moral from others? There is general agreement that the science which deals with morality has as its subject-matter conduct. Ethics treats of conduct, *mores*, ἤθη, *mœurs*, *Sitten*. Now every one of these words covers what we currently call "manners." By the Greeks and Romans what we name "morals" and "manners" were not carefully distinguished. Certain types of conduct were more ceremonial than others, but in so far as they did not occur at random and haphazard, but were the expression of a formed disposition or charac-

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ter, they could be called "ethical" or "moral." And every translator knows how difficult it is to get one English word to render *Mœurs* and *Sitten*. They include both manners and morals. The English language, alone among important philosophical languages, excludes manners from morals.[1]

But the mere fact that the most important philosophical languages use the same word for manners and morals does not prove that there is no distinction between them. There are many real distinctions in the world which language does not reflect. It is thus *prima facie* possible that manners and morals are ultimately different. To determine the question it is necessary to analyse the conception of conduct. This examination reveals the existence of three main characteristics of conduct.

(1) Conduct involves consciousness. It involves more: it involves self-consciousness. In conduct we must be capable of having an idea of ourselves as acting. Thus from conduct we should probably exclude the actions of animals. They are certainly conscious acts, but they are probably not self-conscious acts. The animal does not have an idea of itself as acting. Do manners involve self-consciousness? An attempt to exclude manners from conduct may be made on the ground that good manners can never be self-conscious. Self-consciousness mars the naturalness of true courtesy. But this objection rests on an ambiguity in the word "self-consciousness." Self-consciousness in the philosophical sense, the sense in which we used it in speaking of conduct, refers to that stage of reflective rationality which in the process of evolution

[1] Even in English, the word manners was not always restricted to its present narrow sense. Bacon, *e.g.*, regularly employs it where modern usage would prefer "morals." *E.g.*, "As touching the manners of learned men, it is a thing personal and individual; and no doubt there be among them, as in other professions, of all temperatures; but yet so as it is not without truth which is said, *abeunt studia in mores*." (Advancement of Learning, p. 51.) And even as late as 1721, when Berkeley writes to Percival about his Bermuda scheme, he says its object is the "reformation of manners amongst the English in our Western Plantations."

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has been attained only by man. On the other hand, self-consciousness in common parlance, in the sense in which this objection employs it, means excessive or morbid awareness of one's own existence in the presence of others. Good manners exclude self-consciousness in this sense, but not in the philosophical sense. Manners are possible only at the self-conscious or reflective stage. In this aspect, morals certainly include manners.

(2) All conduct implies some end; to this end all actions are purposively directed. In all moral acts, some purpose to be realised must be present explicitly or implicitly. "Implicitly," we add, for there are many habitual actions which are not consciously directed to any end. If we reflected on them, we would be aware of the end to which they were directed. But we do not usually reflect on habitual actions. In them the purpose is only implicitly present. But we do not deny to these habitual actions the name of conduct. It is clear that on this count also the acts of animals are rightly excluded from conduct. Experiments with animals tend to show that they are not capable of representing an end to themselves, and purposively directing their acts towards its attainment.[2] In the case of animals, we cannot even say that an end is implicitly present. The acts of animals are instinctive and impulsive, and not habitual. What then are we to say of manners? Are they, like the acts of animals, to be excluded from conduct? It seems clear that they should not. Manners may be directed to some end. They involve intention and meaning. It is true that manners as we see them crystallised in ceremonial observance are habitual. They are ways of acting which have become petrified, and in general the ends to which they are directed are not reflectively present. But all manners in their origin are significant, and are directed purposively towards the attainment of some end, though through the influence of habit and tradition that end often becomes obscured.

[2] Cf. C. J. Cornish: "Animals at Work and Play," and W. Mills: "The Nature and Development of Animal Intelligence."

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(3) All conduct is the expression of character. Conduct is a general name for an aggregate of isolated acts: character has a certain permanence and stability. Conduct springs only from character, and character manifests itself only in conduct. From what was said about animals in the last paragraph, it follows that they have no character. Can we say that manners, like the rest of conduct, are an expression of character? Yes, and in precisely the same sense. Manners are a most important form of self-expression. We commonly speak of a man "giving himself away" by some *faux pas*. A mannerly action in the abstract, like a moral action in the abstract, is a blank cheque. It has no value till it is filled in. All mannerly actions and all moral actions owe their peculiar tints, shades, tones, nuances to the character which performs and informs them. Take the simplest examples. The gift of a cup of cold water may be the grudging act of a shallow character, or it may be suffused with all the glow and warmth of a great soul. In each case the action is moral, and in each case it is an expression of character. It owes its colour to the character of which it is a manifestation. Or take a mannerly action. A man of ordinary courtesy, after pulling down the window to open the door on leaving the compartment of a railway train, will pull it up again before shutting the door. But there is all the difference in the world betweeen the ways in which the act is done. The act is coloured by the character of the man. Manners, quite as much as morals in the narrow sense, bear the impress of the character from which they issue.

From this analysis of the subject-matter of ethics, it is clear that it is impossible to extrude manners from the purview of that science. The consideration of conduct in its main implications has revealed no single principle by which we can differentiate manners from morals.

So far, our argument has implied no special view of the nature of ethics, and it may be well to point out that whatever be the type of ethical theory to which we incline,

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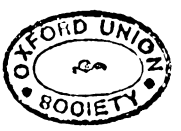
the results already established will still hold good. The various moral theories differ from one another mainly on the question of the nature of the ground of moral approbation. (a) It may be held that approbation rests on a sentiment or feeling of some kind. This is the view of Hume and in more recent times of Meinong. (b) Or approbation may be based on the usefulness or pleasantness of the action approved. Varieties of this view have been maintained by Hedonists and Utilitarians. (c) The prevailing Anglo-Hegelian view is that the goodness of actions depends solely upon motive, and that the end of action is self-realisation. We are not here concerned with the question which of these theories is the true one. None may be true. But they represent the main types of ethical theory, and it can be shown that all of them apply to manners as well as to morals in the narrow sense. Thus the same considerations which led Hume to hold that our approbation of a moral action is based on sentiment induced him to believe that our approval of a mannerly action is similarly grounded. Again, if the usefulness or pleasantness of actions constitute goodness, this criterion will apply to manners as well as to morals. It is none the less certain, though it is not so clear, that on the last theory, also, manners fall under the same category as morals. The goodness of a moral action depends on the motive. It is equally true that the value of a mannerly action depends on motive. The motive means the end before the mind of the agent. The theory with which we are now concerned says that this determines the moral value of the action. The motive need not be consciously present to the mind of the agent. In habitual actions it is not so present. Most mannerly actions are habitual, but in their origin they involved some end. Some end and motive may be said to be implicitly present in every mannerly action. (Sometimes in manners the motive may be explicitly present. Two courteous acts precisely the same externally may be actuated by very different motives. One need only instance the mannerly action of Judas in



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saluting his Master with a kiss.) So far, then, as these typical theories of ethics are concerned, there is no reason why we should resile from our view that manners constitute a department of morals.

This may also be supported along two other lines of argument. In our analysis of conduct, we decided that the term could not strictly be applied to the actions of animals. Having made that clear, we may now point out, not only that in animals' actions there are interesting analogues of conduct, but also that in these approximations to conduct it is difficult, if not impossible, to separate the roots of morals from those of manners. The process of evolution towards morals and manners is seen most clearly in the sex-relationship, because both manners and morals involve, in general, a relation; and the most rudimentary relation is that of sex. Many of these actions are certainly adumbrations of what at the human level we should call manners or morals. In many cases it is impossible to say whether the analogy is more to morals or to manners. For example, is the elaborate display of the male rainbow-fish of the Ganges, so charmingly described by Carbonnier, not quite as much an analogue of manners as of morals? Again, in the flashing love-lights of the Italian glow-insect (*luciola*), where the rapid staccato flashes of the male harmonise with the longer tremulous glow of the female, it is surely not fanciful to see an anticipation of courtesy as well as of mere sexual attraction. A sceptic indeed he would be who would refuse to see both morals and manners implicated in the action of the female of a certain species of lamellicorn beetle (*lethrus cephalotes*), in resenting violently the entry of any male but her mate into the cavity which they inhabit.

Among the lowest types of savages, conduct has already become explicit, and already has begun a rudimentary differentiation of morality into different departments, sexual morality, ceremonial morality, religious morality, and so on. But in general among savages the various departments of morality are always tending to coalesce.

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The intimate and confused relation of ceremonial, religious and sexual morality in a rudimentary state of civilisation is well exemplified in the case of such a tribe as the strange South Indian people, the Todas.[3] Perhaps at this level it would be more correct to say that morals are a branch of manners than that manners are a branch of morals. At this stage morality is based on imitation rather than reflection. "What is customary is right" is the ultimate moral judgment of the savage. Ceremonial morality is the most comprehensive form of morality, and other types are sub-forms of that. At this level, morality consists in imitation, and moral progress in what Tarde has called "cross-fertilisation of imitations."

This brief survey of some factors in evolution just above and just below the source of explicit manners and morals has suggested that their origin was simultaneous, and that the roots from which they spring are the same. But in saying this, we must be careful to avoid a gross error. Running through the last two paragraphs is a *suggestio falsi* which is characteristic of a good deal of anthropological and sociological work. This sociologist's fallacy is found in the argument that because two things are found conjoined at an early stage of evolution, therefore they must not be distinguished at a later stage. Our argument is, I think, free from this fallacy. We analysed first morals and manners, as we find them existing at present. There we could discover no real ground of distinction between them. To biology and anthropology we turned, not for proof, but merely for interesting corroboratory evidence.

It may be interesting also to mention that, in general, by ancient and mediæval thought, manners and morals were not sharply distinguished. Plato, for example, *totus teres atque rotundus* in his ethical views, did not separate them. The undifferentiated unity of both is his ideal. In this Plato is the truest expression, as the great man always is, of his age and civilisation. Interesting it is also to note

[3] See W. H. R. Rivers: "The Todas."

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that the mediæval church, with all its passion for distinctions, did not sharply separate morals and manners. The official formulation of the seven deadly sins—pride, avarice, luxury, sloth, envy, gluttony, anger—covers much that comes under the rubric of manners. For the mediæval church, the important thing was sin, and an unmannerly action might be much more sinful than one in the narrow sense immoral. Blasphemy against the Holy Ghost is rather a breach of good manners than an offence against morality. This position with regard to manners and morals was deeply ingrained in scholastic philosophy, so much so that even in the *Ethica* of the Belgian Cartesian Geulincx, who broke away from scholasticism on most points, we find the intimate implication of morals and manners. And his interesting *Disputationes Ethicæ* contain much that belongs to manners rather than to morality.

From these illustrative and auxiliary lines of argument we must now pass to one or two serious difficulties.

(I) It may be urged against our position that while it is true that the attitude adopted to both morals and manners is one of approval or disapproval, the nature of the approval differs in the two cases. In one case we have moral approval, in the other æsthetic approval. The judgment on morals is a moral judgment, the judgment on manners an æsthetic judgment. It is, of course, clear that these types of judgment do differ. In the history of thought, it was the great error of Shaftesbury and also of Hume that they failed to recognise the difference. The most important ground of distinction is that the æsthetic judgment rests upon feeling only, which is subjective and private, while the moral judgment lays claim to such characteristics as universality and objectivity, which are impossible unless the judgment is based on reason. The æsthetic judgment says "I like you, and I don't know why." It depends on a private preference for what is conceived to be beautiful, and is guided by feeling only. But the moral judgment rests on reason. Its decisions can be defended against the appeals of sentiment by reasons

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which are universally convincing. Is then the judgment we pass on manners moral or æsthetic? There can be no doubt, I think, that it is a moral judgment; but at the same time it seems clear that it implies also an æsthetic element which is absent from the judgments we pass on actions in other departments of morality. In making a judgment on a man's commercial morality, for instance, the æsthetic beauty or ugliness of the action, if it possesses these qualities, is quite irrelevant to the judgment. And our feeling-attitude towards the man or his action is more likely to distort our judgment than to corroborate it. But in judging of manners or ceremonial morality, the æsthetic element is present. The feeling-attitude for what is beautiful in manners must be taken into account in our judgments on them. Good manners are not only morally right, but also æsthetically beautiful. Now so long as the decisions of the moral and of the æsthetic sense agree, it may be difficult to tell whether the resultant judgment is chiefly moral or æsthetic. To decide the question, it is necessary to examine those cases in which the moral and æsthetic judgments differ in their verdicts. These cases are of frequent occurrence. Many things are æsthetically beautiful which morality condemns, and many things which are morally admirable leave the æsthetic sense cold and contemptuous. An apparently mannerly action may be applauded by the æsthetic sense, only to be condemned by morality. In such a case the moral judgment is supreme, and its sentence must be sustained. Morality, as Aristotle said, is architectonic, and all other judgments on action are ancillary to it. The judgment on manners is ultimately moral.

(II) A further objection to our view may be pressed. It may be said that while morals are spontaneous, manners are petrified; while morals are rational, manners are traditional; while morals are universal, manners have only local or sectional validity. In a general way, this objection has been answered by the whole argument of this paper.

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But two aspects of it are important enough to merit more particular consideration.

The harsh antithesis between the traditional authority of manners and the spontaneous rationality of morals rests on certain facts and implies a certain theory. It points on the one hand to the fossilisation or crystallisation of custom and ceremonial, and on the other to the exuberant and effervescent freedom of morality. But the facts in the two cases are not parallel. In the first case, the reference is to the actual rules laid down by custom; in the second, to the self-legislating spirit of the free man. When we speak of the petrifaction of manners, we are thinking of the meticulous regulations in which the spirit of courtesy is often confined. When we speak of the vitality of morality, we deliberately close our eyes to the galling restraints and restrictions of moral rules. But the spirit of courtesy is as free and self-determining as that of morality. The spirit of morality and the spirit of courtesy are alike free and spontaneous, though the rules which they lay down are rigid. If casuistry be a genuine science, it will apply in the realm of ceremonial morality, as in all other departments of the moral life. Such a science will employ rules of conduct, but it will not cabin or confine the free spirit of morality. To the whole moral realm, including the department of manners, we may apply Dr. Johnson's canon of artistic criticism, which Fanny Burney has preserved. "There are three distinct kinds of judges: the first are those who know no rules, but pronounce entirely from their natural taste and feelings; the second are those who know and judge by rules; and the third are those who know but are above the rules." In morals and manners alike, the highest class is the third. A man should know the laws of morality and the regulations of courtesy; but he should also be above those rules. He should be informed by the *spirit* of morality.

The objection which we are now considering also suggests that while morals have a certain universality, manners are particular, differing among different classes and in

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different localities. There is a general agreement, it may be said, on matters of morality; but there is no such agreement with regard to social regulations and rules of honour. It must be admitted at once that this is a real distinction, though it is a distinction only of degree. It is, of course, obvious that the manners of farm labourers differ from those of professional men, but a similar difference also exists between their standards of sexual morality. Again, the courtesy of France differs from that of America, but the two countries also diverge widely in their standards of commercial morality. And no one who has surveyed the range of facts collected in such a book as Westermarck's *Origin and Development of the Moral Ideas* will attempt to deny that among savage tribes there is quite as much diversity in morals as in manners.

All that has been said supports the view that it is impossible to exclude manners from the realm of morality, though within that realm there are many departments of morality and many degrees of moral good. In general, an offence against courtesy involves less moral guilt than a fault in any other department of morality. This principle may be illustrated in numerical terms by the provision in the Salic Law that he who calls a freeborn man a fox is fined three solidi, while any one who libels a freeborn woman a harlot is mulcted in 188 solidi.[4] And we somehow feel that there is a lack of moral balance in a community which regards the refusal to fight a duel as more immoral than bigamy. Yet while every moralist would probably agree that breaches of ceremonial morality are less heinous than offences against, say, commercial morality, it is worth noting that a community is often cut to the quick by offences against a code of manners, though transgressions in morals leave it cold. Jesus was crucified because, though people could not lay a finger on a single moral offence, they were exasperated at him for consistently ignoring the conventional standards of the time. The

[4] *Lex Salica*: ed. Hessel. col. 181 sqq.

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Sophists were unpopular, not because they corrupted people's morals, but because, as Mr. Bosanquet has said, they showed such abominably bad form in taking money for talking at parties. The reason why Swift's writings were admired and Whitman's abhorred (though Swift's works are really more immoral than Whitman's) was simply that Whitman shocked people's manners while Swift did not.

We do not deny that it is possible to distinguish between manners and other departments of morality. But all the expressions of courtesy fall ultimately within the one realm of morality. The moral life is a unity; and a breach of courtesy, like an offence in any other department of morals, is *ipso facto* a transgression of morality.

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WHEN MATING AND PARENTHOOD ARE THEORETICALLY DISTINGUISHED.

ELSIE CLEWS PARSONS.

IN THE July number of this JOURNAL was pointed out the need in ethical theory of a distinction between mating and parenthood, a distinction latterly made practicable by the use of contraceptives. Taking a few common captions as a convenient classification, let us now particularize certain effects of this distinction, remarking in general that sex relationships will be considered private relationships, self-centering, appreciated or depreciated for themselves, and that parental relationships will be considered public relationships, centering about the child.

I. MATING.

The Minimum Age for Mating.—The standards are formulated in law as "the age of consent" and "the age of consent at marriage." In many of our states below the age of consent at marriage parental consent is required.

The age of consent is a definition for rape. Below the age of consent sexual intercourse is rape—providing, we note, as one of the confusions on this subject in public opinion, providing it occurs outside of marriage.[1] This confusion is a consequence of the proprietary theory of marriage, a theory making tenable the idea that within marriage rape is not conceivable.

Excepting the married below the age of consent from the law on rape and validating marriage below the age of consent at marriage through parental consent are facts which point to the interest originally expressed by age regulations—parental and marital proprietorship.[2] Age regula-

[1] The term marriage will be used throughout in the sense of the legal relationship.

[2] See Howard, G. E. A. History of Matrimonial Institutions, vol. 1, on child marriage and age of consent.

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tions were not at all concerned with the welfare of the young person. That concern the rationalizer and the sentimentalist have read into them,[3] only characteristically to befog the question and put off consideration of the real interest, the fact of immaturity.

Whatever conclusion we may come to when we really begin to think about it, analyzing our vague "too young to marry" ideas, the age of consent and the age of consent at marriage will be necessarily the same, since they bear upon exactly the same relation, the relation between immaturity and sexual intercourse, bearing upon it, too, solely from the standpoint of the young person herself or, let me add, himself. Parental consent will cease to figure; the only obligation of the state or the only concern of the public will be the protection of youth. Reformulated and reduced to a single term, the age of consent will probably be identified with the legal age of majority.

The Minimum Age for Childbearing.[4]—It seems unnecessary to go into the reasons why this subject has received no direct collective attention, important as it is to the public, more important even, since more inclusive, than the minimum age of mating. With coincidence between mating and childbearing no longer necessary, the minimum age to conceive becomes open to discussion. Here again the only consideration is the welfare of the individuals directly concerned, the potential mother and her child. Should she be fully mature or not before she conceives? Mature physically or mature in every way? And what position is open for collective action? If the state is to pursue the policy of eugenic or parents' certificates,[5] the age of the parents will be considered, the certificate refused to persons

[3] A parent is better able to choose a mate than the young person, is one of their irrelevant contentions.

[4] This subject should be classified obviously under parenthood. It is so regularly introduced, however, into discussions of early mating, introduced, I may say, to utter confusion, that the better to emphasize *its distinction from the subject of minimum age for mating*, I too am disposed to take it up out of order.

[5] More of this subject under parenthood. *See* p. 212.

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below the standardized age. Obviously refusal would not preclude the birth of children to immature parents, but it would help establish a new standard for conditions proper for conception, the new standard we shall discuss later for illegitimacy.

Seduction.—In the suit for damages which parents or husbands [6] may bring, the interest is again one of parental or marital proprietorship. The breach of promise suit brought by the woman herself is the outcome of the same proprietary theory—as a matrimonial chattel the woman has been damaged and depreciated. As a seller of herself in the marriage market she is to be compensated. This proprietary theory of betrothal or of seduction is already passing.[7] It will yield in time to a new conception of seduction, to defining it as any deception in courtship by either woman or man as to what she or he would take from or give to the other. Seduction so defined must be accounted a private offense, an offense quite outside collective jurisdiction. Moreover it is a region where any outsiders, even "family or friends," may well fear to tread. On the other hand, consideration of the conditions which facilitate seduction is well within the province of both the family and the state, within the province of any educator of youth. Knowledge about sex renders the seduction of either women or men difficult. In sex relations, if anywhere, ignorance and helplessness go together. And yet seduction or betrayal may be due not only to a general ignorance of sex but to misplaced trust in a particular man or woman. If a woman is unwilling to conceive, for a man not to act accordingly is a betrayal. To make a man believe that he will be the father of a child not begot by him is another form of betrayal, a more generally recognized form. As to the false promise to support offspring of an union, the

[6] Suit for the alienation of affection. By one of the false analogies society so often makes, this suit may also be brought by a wife.

[7] The breach of promise suit has become a mere instrument of legal blackmail; but that the law on promise of marriage (or, let me add, on alimony) has never been attacked by feminists is an ironical situation anti-feminists might well make more of.

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promise which would correspond under the new regimen to promise to marry under the old, let us postpone its discussion until we consider in general the parent's contract.

Adultery.—Seduction of a woman already mated is an affair of the state only when the state endorses the theory of marital proprietorship. Nor in the new definition we have given the term is seduction any affair necessarily of the first mate. If a person is living in adultery, *i.e.*, in a covert relationship, he or she may be practising seduction, *i.e.*, deception in love making—or not. Adultery is almost as ambiguous a term as marriage. If we continue to use it, we should understand it to mean a sex relationship with two men or with two women, covert to one or the other or to both. The element of covertness is the essential feature. Into those subtle questions which covertness raises for ethical theory, I would not enter in this discussion.

Polygamy.—Adultery in the current definition is not necessarily either a covert or a plural relationship. In the definition advanced, it is both. For the overt plural relationship we are again driven into old terms, for polygamy as we now use the word may be both a covert and a single relationship. Incidentally, let me remark that, when we begin to take sex relationships seriously in themselves and not merely from the point of view of other relationships or of outsiders, we shall realize the poverty and inadequacy of our terminology. It is, however, singleheartedness in mating we are now discussing. It, too, is a subtle and very complex question. Let me merely suggest that, with the right to privacy established for sex relations and freedom for self-determination, many of the problems of singleheartedness will disappear, its extraneous and artificial problems, such perplexities, for example, as protecting in the eyes of the public one's matrimonial honor or dignity as well as many of the questions raised to-day in getting a divorce. But other questions will of course remain, questions arising out of individual differences and individual variability, questions of jealousy, questions of habit. And

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yet even these conflicts, one ventures to say, will be vastly mitigated by the principle of privacy in sex relationships. With the conditions for privacy more or less formalized and their observance a conventionality, with the advertisement of a sex relationship discountenanced, the spirit of monopoly towards another will be condemned, even getting the habit of being always with another will be discouraged. The causes of jealousy will be lessened. Moreover, under natural conditions, singleheartedness, genuine singleheartedness, will be more likely to arouse singleheartedness. The monogamist by nature will be less likely to mate with one of polygamist tendencies.

Prostitution.—To this subject I refer in conclusion merely to state why I need not refer to it at all. By the new distribution of ethical values which we foresee, prostitution is little if at all affected,[8] perhaps because of all sex relationships prostitution has always been considered for itself. At any rate it would seem that, whatever the practical conditions in prostitution in need of a collective remedy, conditions of preventable disease, for example, or of trade in prostitutes, on the whole the theoretical attitude of the community needs no reforming. The relation arising in prostitution is already adjudged a private relationship—except of course where reglementation prevails. In itself, subject though it is to adventitious frauds, it is a frank relationship, neither man nor woman deceives the other. It is an extremely imperfect, *i.e.*, partial relationship, and by all is it so regarded. Social disapprobation, to be sure, does not fall equally upon the sexes, but that is because in prostitution the sexes do not have corresponding parts. In prostitution, men commit an offense against sex, women are members of a despised economic caste. Against sex,

[8] Although of all sex topics it is the most under current discussion and of all the most subject to attempts to change its values. Collectively disapproved of, its reform is, I suggest, a *safer* subject to discuss than marriage reform; it is in discussion as it is in practice a kind of scapegoat for marriage, an outlet for the dissatisfaction felt about the collectively approved forms of mating. It becomes therefore in contemporaneous plays and novels the object of the crassest kinds of sentimentality.

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women prostitutes may not be offenders at all, their occupation being entirely economic. Society's caste prejudices are far stronger than its still embryonic feeling about offenses against sex. It is undemocratic of society to demean the services it pays for, services it thinks it can not get on without and yet does not much value, or to segregate any economic class—house servants, clergymen, or prostitutes—but it is not strictly a part of a discussion of sex ethics to criticise society for its failures in democracy.

II. Parenthood.

In considering the minimum age for childbearing, I referred to the use of parent's certificates. In the earlier discussion the suggestion had been that parent's certificates take the place of marriage licenses and parent's contracts supersede marriage contracts. More of this substitution.

Illegitimacy.—The only form of illegitimacy now recognized refers to the sex relationship of the parents. Into our substitute view this relationship will not enter. The health conditions under which the child is conceived will be paramount. Parents of an improper age or otherwise physically defective, uncertified parents, will be accounted illegitimate. Parents neglecting to contract with the state about the care and bringing up of the child will also be considered illegitimate, *i.e.*, parents shifting their responsibility to the state. In other words, illegitimacy will refer to parents only, not to offspring, and to parents in so far as they shirk their responsibilities both to their offspring and to the state.

Free Motherhood.—Upon which parent do these responsibilities fall? Upon the mother or the father? Under the parent contract system I have suggested, the responsibility may be assumed by either parent or by both. However deeply concerned society may be about the advantage to the child of having two parents, the state must hold itself indifferent. Without trespassing upon the right to privacy in sex relations, the fact of paternity cannot be compulsorily established. The state cannot afford to search for pater-

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nity. Maternity, on the other hand, needs no proof. It is upon the mother, therefore, that the state, if need be, must place the final responsibility. There are other reasons for holding a mother more responsible than a father, ethically more acceptable reasons for considering a foundling more to the discredit of its mother[9] than its father. During pregnancy, at least, if not during infancy, it is the mother who must care for the child.[10] From natural circumstances, also, the final responsibility for conception, except in case of rape, is hers. She has more opportunity[11] to understand the actual conditions necessary to impregnation. That nature places the final responsibility for childbearing upon the woman seems to me axiomatic, incontrovertible. That it is controverted in certain feminist circles, is due, I think, to the persistence of the very institutional ideas about women that feminists in general oppose, the proprietary ideas that make of women irresponsible beings to be cared for since they are possessed. Until women assume a larger measure of responsibility about childbearing, hardly can they expect a larger control of their children. Free motherhood is dependent upon responsible motherhood.

Maternity Insurance and Mothers' Pensions.—By responsible motherhood I do not mean wholly independent, economically independent motherhood, not at least in the near future. Lack of economic training and limitation of economic opportunity bear at present too hard on women to enable them to be economically independent during certain periods of childbearing and rearing. In course of time I foresee young women working to insure themselves against the day of economic unproductivity, to insure themselves for maternity. Even to-day they might well begin to transfer to that end the energy they now give to catching

[9] Assuming the stigma of bearing a fatherless child is removed. Then and only then is deserting an infant an indisputably shameful act.

[10] To the argument that she has therefore contributed before the birth more than her share of care, I can only rejoin that it is the logic of life that responsibility increases with increase of function.

[11] Under normal circumstances. The opportunity a woman is deprived of through faulty education I do not take into account.

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husbands or to unpaid labor at home. In return for that labor they might well ask their family to help them pay their maternity premiums. To see that your daughter was well insured for maternity might take the place among parental obligations of seeing she had a dowry.

Such a system of maternity insurance might develop into an adequate provision under normal circumstances. But for special cases and at present more generally the state should be called upon to co-operate with the over-handicapped mother. It should maintain homes for expectant or convalescent or nursing mothers. Its maternity hospitals should be greatly increased and its out-patient obstetrical service. It should continue its experiments in mothers' pensions.

Mothers' pensions must be viewed as a highly tentative plan, and as a plan perhaps to meet emergencies rather than normal circumstances. For normally I would not shift the support of a child from its mother to the state. The situation we are discussing is one where the woman cannot both care for the child and earn enough to support it as well as herself. It is just the same situation that a man alone with a child must face. And as he would meet that situation, so must a woman. He or she has to place the child under the care of others and then work for its support. The risk of not being able to care for her child herself is the risk an economically independent woman must run. It is the price the theory of free motherhood cannot escape paying.

Paternity.—In practice, however, one sees no reason why it should often be paid or, at any rate, paid unwillingly. Under the parent contract system a woman would continue to be free to co-operate with the father of her child instead of with the state. Legally she would be as free indeed as she is now to shift the entire responsibility for the child upon its father or, base enough, upon its supposititious father. She would be as free to insist upon a man's undertaking a parent's contract before there were any possibility for conception as she is now to insist upon a marriage con-

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tract. To meet the circumstances of seduction, suit to enforce a promise to enter into a parent's contract might even take the place of suing for breach of promise to marry. A woman would not only be free, we may conclude, not to join in making the parent's contract; very often, generally in fact, she would be urged, I surmise, to stay out of it. I see no reason why men would be more ready to relinquish the support and control of their children under a parent's contract system than under the present marriage system.

Under the parent's contract system, a man as well as a woman would be free to make the contract he preferred, having but to choose for the mother of his children the woman who agreed with him about the distribution of functions in the family. One of the advantages of the parent's contract system to a man would be the proof that it is able to afford that he is really getting the kind of woman he wants, be she the old-fashioned clinging vine type of woman or the *émancipée*.

Conclusion.

Unobscured by questions about offspring and therefore the more readily detached from the tentacles of the proprietary theory, the theory of sex relations may be foreseen to work out its own salvation, introducing the principle of reciprocity between the sexes and for both men and women setting new standards of sincerity, honor, and responsibility. These standards will also be set in the theory of parenthood. Illegitimacy will be redefined, defined not from the standpoint of an illicit sex relationship, but from the standpoint of the child. The stigma of parental irresponsibility will attach to parents of children begot or conceived under circumstances injurious to the children themselves. Greater economic responsibility will attach to women and they will have proportionately greater freedom of maternity. To men as well as to women parenthood will become a more voluntary and therefore a more significant enterprise.

This shifting of values, let us be advised, will by no means

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be a harbinger of Utopian conditions. It is no guaranty against sex conflicts or undeveloped types of parenthood. Nor is a parent's contract system a panacea. It does not provide, for example, for a change in a parent's earning capacity, much less for a change of heart. No social machinery can be contrived to adequately meet the changes of life or to preclude spiritual inadequacy or disaster. All that new social machinery can do is to advertise that the flotsam of a traditional and inept morality has been removed to let flow the current of a finer and a truer spiritual life.

ELSIE CLEWS PARSONS.

NEW YORK.

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THE INTERDEPENDENCE OF FAMILY RELATIONSHIPS—A REFLECTION.

MARY WILLCOX GLENN.

IN READING Mrs. Parsons' two articles on Marriage and Parenthood the first impression one gets is of her ability to simplify the problem with which she is dealing by a consideration of only one set of values at a time. Mrs. Parsons' power both through her spoken and her written words of making a sharp, an almost rigid distinction, between the several values of what one has been in the habit of thinking of as essential parts of the life of the family, or, perhaps one should say, of ignoring one set of values while accentuating another set, emphasizes a fact. The fact is that her spoken and written words seem to bear the trademark borne by much of our social theorizing. The trademark seems to guarantee that the sociological offering will not have suffered any modification because of subjection to the influence of the student of psychology on the one hand or the practical worker on the other.

But there are recollections that the reading of Mrs. Parsons' article evoke. And these recollections that come to me, a case worker, emphasize the fact that values are often not only so intangible but so dependent one on the other, that any effort to divorce, by fiat, one group of values from another, thereby setting aside arbitrarily a whole body of slowly accumulated sanctions and loyalties, would work havoc in social life.

We were sitting recently around a table, a small group of persons who were keenly interested in studying some selected case records in order that we might see whether in the records, themselves, could be found an indication of a method of study and treatment of families suffering under adversity, which would go to prove that the workers interested in selected cases had been directed in their work

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by some underlying motive for, or principle of, action. We took up for consideration the history of a man who had been trying to throw on the community the burden of supporting his family. He had shown, by his shirking of work and his readiness to let his family turn to charitable agencies for help, that he was one of a class of men who are quick to seize any chance that a soft-hearted community will give of letting heads of families slip off their yoke of responsibility. It was not until the last of a series of workers, who had tried to steady him to carry his responsibility, called on his mother, who lived in another city, and got from her a definite impression of his early years and used that knowledge as the starting point for her effort in behalf of the man, that an impression began to be made on him. He had not had much to encourage him in his home. His father had died when he was very young, and his mother had not been able to prevent his falling into the company of a gang of unruly boys, through whose influence he was induced to run away from home when he was still in his teens. But when the worker sat facing him after that interview with his mother, he who for twenty years had not been in communication with his boyhood home, and charged him with having failed to help support his widowed mother, she brought him to realize that he had headed wrong from the start. He, the man, who was failing to care for his own wife and children, had, as it were, to start all over again by taking up, where he had left it, his relation with his own mother.

It seemed a touch of genius, a deepening of the sense of the value of human relationship, to have grasped the fact that in the mind of that man there had been a something at work which, as it were, inhibited him from bracing himself to meet the demands made on him by his wife and by his and her children. It was fascinating to sit and hear the story unfold itself. The son did visit his mother. She yearned to see his youngest child, his wife with the children did visit her later on, the man secured and held work, the family moved into a better apartment, it began·

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to accumulate some household goods. There were incidents which showed that the tendency to depend on charity was not an easy one to conquer, but, as one listened to the unfolding, one got a definite impression of the grip that the family ideal was getting on the man, and one felt that he was finding that the roots of the courage to live do lie imbedded in the life of the family itself. There came with the recital a sense of the claim which parent has on child—not merely, which child has on parent. One realized, moreover, that the claim must have been a part of the fibre of that particular man, in spite of the irresponsibility that had characterized his drifting existence.

A few days later I was sitting with another, a smaller, group to consider the problem of a woman who had brought disgrace on her family through her habit of drink which had led her to have to serve successive terms in a workhouse. I had gone to the prison with the determination to do what I could to protect the woman's husband and children so that on her discharge she should not have again to be committed to such an institution. My care was to find if there were any possibility of holding her anywhere under restraint. As we sat and talked, I and those other women who knew her in her prison life, it became more and more clear to me that what we must do was not to restrain but—to use an old-fashioned phrase—to rescue her. She must be saved if the family, itself, were to be saved. There could be the sacrifice of no chance for her in order to try to protect them. They could not be divested of their responsibility. As long as she, socially speaking, was a failure, they had failed. The act of saving her, not of protecting them against her misdoings, became the essential need. This may sound fantastic, especially so in view of Mrs. Parsons' clear cut, incisive arguments for the freedom of the individual. But fantastic or not, it expresses a conviction. Moreover, the fact of there being children seemed neither to lessen nor to increase the husband's responsibility for the safeguarding of his wife.

A third meeting of persons interested in considering

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the problems of individuals comes to mind. We were gathered together in the office of the district of a charity organization society for the annual meeting of its case committee, when stock was being taken of the year's achievements. The secretary of the district had just reported that because of lack of employment the number of cases handled by the district had been twice as large as in other years. Those present had in mind that the recent discussion of cases had centred in the consideration of two problems—the problem of wife desertion and the problem of the neglect of childhood because of the inebriety of parents. But in spite of the fact of the hard times, and in spite of the fact that there had been many instances of neglect and abuse on the part of one or both parents, the secretary could go on to say that the impression uppermost in her mind was the impression of the courage and the resourcefulness of the people she had worked with, a courage which came to them through their determination to pull themselves through somehow as members each of a family group. I think, in this connection, of two boys who belonged to the neighborhood that the secretary had in mind. They were fiercely determined to help their mother, a widow, to keep their home without any intervention from the outside. To think of their fierce determination in terms of a contract, to think of it as reduced to the form of an agreement, seems to belittle their fine appreciation of the claim of family life. For the signed agreement, the contract to support the children that are begotten, seems to imply that if those children are to make provision, in turn, for their parents, it, too, should become a matter of social contract. And then I recall a red-haired Irish laborer, whom I saw dying in one of the beds of a city hospital. He was dying of cancer, and his sufferings and his homesickness were very great. But he kept a brave face when his wife visited him, and he wanted her not to know that he yearned to die at home. He and she had brought up children, their struggle had been a hard

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one, but one could feel that if there had been no children, there would have been for them no less a real union.

Now I would not imply that Mrs. Parsons implies that her scheme would not have left him and her free to be married in the most old-fashioned sense. But when one has seen men and women up against the hard conditions of life, when one has seen how slowly they adjust themselves to restraints, when one has watched the relationship which has begun on a low plane of gratifications rise on to a high plane of mutual trust and self-denial, one fears to have set to one side the "stern limits," to quote Professor Tufts, which have been "set by reason, by authority and by public opinion." The real things that count are of slow maturing value.

And one further recollection, one of the earliest in a long series of recollections of how the betrayed girl tries in the large city to lose her identity, so that unnoted she may give birth to her illegitimate child. It was in the maternity ward that I saw her, and it was there that she was being offered a chance to put her baby away and to go back free from stigma to the family who were in ignorance of her condition. The struggle of our several wills, the girl's, the hospital matron's, and mine, seemed not to be a struggle in behalf of social justice, but in behalf of a woman's life. What seemed to me then to count was that she should be straight with her own people, with those who were of her own kind. She did go back to her sister in the country, and that sister took her baby and knew, in taking it, that it was hers, though for a time at least the fact was withheld from the neighbors.

By the recital of so simple a collection of histories no claim is made that they invalidate Mrs. Parsons' clever scheme. They merely serve to make clear that her theories and a case worker's handling of family and individual problems are likely to lie on different planes of effort. In fact, none of this is an answer to Mrs. Parsons. Each incident serves but as a commentary by a case worker who has seen how various, and often how deplorably contrary

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to expectation, are the reactions of individuals to the efforts that are made in their behalf; one who more and more has come to realize, also, that the success of any effort in behalf of a distressed individual will depend in large measure on the quickening of a recognition of the claims of kinship and on the strengthening of the steadying influence of tradition.

As I was writing these notes, I was interrupted by an Irish widow, who happened to be looking after my comfort: "My husband," she said, "used to be very nice to the little girl I had in to help me. I can remember he used to say to her 'The mark of a lady is to keep her elbows clean and smooth.' " In my day I have had pointed out to me many marks which have been said to prove the quality of a lady, but never before this particular one. The remark of the late husband of my Irish friend seemed to fall rather pat, into my consideration of the diversity of values that must be taken into consideration in making plans for the betterment of human relationships.

MARY WILLCOX GLENN.

NEW YORK.

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THE ETHICS OF THE FAMILY.[1]

JAMES HAYDEN TUFTS.

THE point of view of the student at the present time in approaching such a problem as that of the ethics of the family makes his task less simple than that of old. He cannot depend upon an infallible intuition or an infallible deduction. He must consider consequences, on the one hand, and psychology of men and women, on the other; he must consider social conditions and the evolution of human personality. Doubtless there are seemingly constant factors—the thrill of passion and the necessity of rational control; the love of mother for child and of child for mother; the effects of habit and the power of social convention; the conflict between individual choice and public opinion—all these in a sense reappear in generation after generation. They claim their place in any treatment, but love between the sexes has been made in many respects a different thing because of all that fiction and poetry, as well as church and state, have done to it. Recently the industrial revolution, the conditions of city life, the progress of higher education, the general movement toward emancipation of woman, have combined so to change both the controlling conditions of human life and the mental attitudes and temper of men, women, and children, that the problems long since comfortably and confidently settled clamor for reconsideration. Ethics may or may not reach conclusions as to marriage, divorce, economic dependence of woman, parental responsibility, distinction between legitimate and illegitimate birth, which agree with the judgments of the past, but no ethics can simply reaffirm these past judgments without noting the changed personalities and changed conditions.

[1] An address delivered before the Section on the Family and the Community at the National Conference of Charities and Correction, Baltimore, May 15, 1915.

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We may well recognize, first of all, that instead of the ethics of the family, we might more properly speak of the ethics of families, for the ethical questions which are really uppermost in the middle class family of to-day are very different from those which are at the front in the working-class family. Nevertheless, there are some general considerations which apply to both.

Moralists sometimes make a distinction between positive and negative morality. Positive morality offers values: negative morality says "Thou shalt not!" There is perhaps no field of ethics which in the past has had a point of view more prevailingly negative than the morals of the family.

(1) It has said little about a duty to marry, but much against sexual relations except in marriage; little about a right choice, much about divorce.

(2) It has said little as to the positive value of children, but has tabooed such questions as restriction or illegitimacy.

(3) Since the whole sexual nature is so liable to become the cause of evil, it has urged that we know and talk as little about it as possible; that we bring up children upon the basis that innocence is the only virtue for the young, and that there is in any case no positive value in at least the physical side of love.

We are not entirely satisfied with this negative morality. It doesn't work well in several particulars. Some of the facts which challenge attention are the following:

(1) There is a small and decreasing birth-rate among the educated classes, which means, unfortunately, that these classes are constantly passing out from our population. In this country some of us, at least, believe that the stock which settled in New England and moved on into New York and the middle west was a good stock. We do not like to see it disappear, but it certainly is disappearing, and relatively to other stocks it will, according to present indications, be less and less influential in the future life of the country.

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(2) There is increasing divorce.

(3) There is in some parts of the western world increasing illegitimacy. This may or may not be true for this country, since we have so little accurate registration that it is difficult to know, but in certain European countries the increase, particularly in large cities, is striking. In Berlin, between the years 1891 and 1909, legitimate births decreased 19 per cent (from 47,000 to 38,000); illegitimate increased 39 per cent, and are now at the rate of about one in five of all births.

(4) The double standard of morals persists, and prostitution as a profitable commercial enterprise is as strong as ever.

(5) The "social diseases" are far too prevalent.

(6) Various social agencies find so many of their problems thrust upon them by bad family conditions that the waste and expense of the situation are becoming increasingly evident. The defective children, the retarded children in the schools, the weak who swell the number of prostitutes, the boy criminals in our large cities, the deserted wives and children, the family troubles which come to light in our juvenile courts and courts of domestic relations, all tell of failures which may or may not be out of proportion to what should be expected in any human institution, but are, at any rate, sufficiently numerous to be a challenge to our existing ethics.

(7) Finally, the vast literature upon various aspects of the woman question reflects the friction which may not find outlet in the courts or the charities, but which, none the less, is very real in certain classes of families.

Negative morality had good reasons for many of its prohibitions, and when there was no reason that we may now wish to call a good reason, there was at least an explanation. Passion needed and always will need stern limits set by reason, by authority, and by public opinion for the protection of both men and women, and particularly for the protection of women. There is also an element of true psychology in the taboos which the race has fixed upon

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excessive attention to the sexual life. While the original motive for these taboos may very likely have been in large part fear of contracting feminine weakness or fear of the ghosts that might be presumed to hover about at such a time as the birth of a child, there is, no doubt, a certain instinctive modesty which is one of the strongest supports to chastity and purity and which should not be broken down. Besides these valid reasons, there are special explanations for our inherited attitude. When people lived in small towns and knew each other intimately from childhood, when parents knew the habits of their neighbors' children almost as well as those of their own, and when daughters could have the parents' advice, there was no such tendency to hasty marriages between persons who had had scarcely any opportunity to become acquainted as now exists in the large cities. Under such conditions, too, there was probably far less communicable disease. On the other hand, there was no need of especially inculcating the duty of marriage or the desirability of raising children. When no other way of support lay open to women, the pressure was strong in the direction of marriage. When people live largely an agricultural life, children are very little added expense, and are not only a joy, but frequently a great help to their parents in the house and on the farm. Among higher classes the importance of maintaining the family name and transmitting family wealth was a strong inducement which seems still to operate, especially in royalty and in the country families of Europe; but there is no great sentiment about passing down the family flat, and indeed the absence of any such family tradition is well suggested by the question of the child of one of my colleagues, when passing by a house where the parents had lived—"Is this one of the houses where I was born?" But there were other grounds less rational. The double standard, the harsh inequalities before the law, are survivals of military and aristocratic society. The sex taboos are in part due to outgrown

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superstitions, to crude beliefs about original sin, to degrading doctrine about woman.

Besides the failures of negative morality, there are certain new values which demand recognition.

(1) For the middle class family the great factor is undoubtedly the new consciousness of personal rights, powers, and interests on the part of women. We cannot expect to have higher education, new avenues of achievement, new means of economic support, new possibilities of freedom, and still retain the special type of monogamy which was characteristic of earlier civilization, and especially of a civilization which in many ways was brutal in its restraint upon woman. Reinforcing these is the extraordinary industrial change which has taken the productive work from woman, has made her a consumer, and has made it difficult, if not impossible, for her to maintain, on the one hand, her activity as an intellectual or executive person, and, on the other, her position as wife and mother.

(2) The second great positive value is the new recognition of the child. Our vast public school system, originally organized for protection to the state, is now definitely valued as an instrument for giving the child an opportunity to make the most of himself and to develop his powers. Great advances in medical science have restricted infantile diseases and magnified the general esteem of the importance of every human life. Societies for the care of orphans or neglected children, juvenile courts, associations of nurses, are indices of a growing conscience. This increased valuation upon children is not satisfied to continue the old proverb which Ezekiel contended against more than two thousand years ago: "The fathers have eaten sour grapes, and the children's teeth are set on edge." Our older theology sent children unbaptized to limbo or to hell because of their parents' omissions or of the ancestral sin. For some time theology has balked at attributing such a destiny to the infant, but we are yet very slow about going the whole way. We have thus far hesitated to give the child a fair chance irrespective of his parents.

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We have assumed that the child born in a very poor family cannot expect good sanitation or opportunity for healthful play, or as good an education as the child born to the well-to-do. In the case of the illegitimate child we have been even more chary. But if I am not mistaken, the next generation will look for some way to control and, if necessary, punish reckless sex relations without visiting positively upon the children the iniquity of the fathers.

(3) A third new value is that of the positive significance of sex and of motherhood. There has, of course, always been a literature of motherhood, and individuals have valued their own experiences as mothers or as children, but so much of the older valuation has been associated with limitations upon the life and activity of woman that it is not surprising to find certain writers minimizing the significance of sex in woman's life. They claim that sex has been exaggerated. They would settle the conflict between home and industry by encouraging women to enter gainful occupations. They would make motherhood incidental, rather than principal, in determining woman's plan of living. In contrast with these proposed solutions, which magnify the value of independent occupation and productive work in the world of industry or commerce, Ellen Key is distrustful of the effect upon woman's life of organized industry, and seeks a new appreciation of woman's sex life. It is not necessary to decide that all women must conform to one pattern, but taking woman as a whole, and taking business and industry as now organized, I should side with Ellen Key as contrasted with the opposing school. For a minority of women the path of freedom and development may lie through independent economic activity, and in case they have families, through such systematized care for children as would free the mother for her intellectual or active pursuits outside, but for the majority I believe that greater happiness, as well as fuller development, lies rather in magnifying family values and freeing them from the survivals of subordination,

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of unscientific and ill-organized methods, which belong to former days.

(4) The fourth positive value which demands recognition in the ethics of the family is the value of sound, healthy, and well-reared stocks, not merely for the individuals whose enjoyment and achievement are concerned, but for the community and the state. The pendulum swings back and forth between nature and nurture, between the importance of well-bred children and the importance of good environment. Just at present biology is laying great stress upon the former. With its Mendelian law as an instrument of analysis, biology is certainly bringing before us more forcibly than ever the importance of heredity. And as we are learning to think in terms not merely of to-day, but of to-morrow, not merely of the local community, but of the nation, we are gaining a new consciousness of the tremendous value to society of certain stocks. If anything was needed to re-enforce this biological truth, the lessons of the war are fulfilling that task. It was the Boer war that awakened England to the deterioration of her population in physical stature. The present war has been a tremendous object-lesson of the value of giving thought to health and fitness. It is even conceivable that it may make its lesson so impressive as in a measure to reclaim from other forms of wastage the frightful waste of the best stock which it is itself displaying.

These four new values—the value of women's freedom and development, the value of the child, the value of sex and especially of motherhood, and, lastly, the value of sound stock well reared for national life and for the life of the world—must be reckoned with in the new ethics of the family. We can no longer meet the situation by taboos and negations, by ascetic restraints or sentimental gush, nor by mere appeals to authority or reiterations of past conventions. We must look forward and think of the family in its larger relations. If we retain its essential features, it must be because they respond to these positive

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values and not because they have come down from the past.

What are the lines along which our ethical consciousness is likely to move in recognizing these new values? Is it likely to shift in the direction of free love, so called, in the direction of economic independence for women, in the direction of less of family care and more of public care and control?

The challenge to existing institutions comes partly on the ground of personal freedom. "Of all dogmas, monogamy has been that which has claimed most human sacrifices." It comes partly on the ground that many women have no opportunity for marriage, whether this is due to such general urban conditions as increased living expenses, or to such special conditions as the larger relative number of women in certain European cities. Many are thus excluded from life's greatest experience, from its greatest moral opportunity. Resenting these constraints and limitations, some would abolish the double standard by having woman adopt man's standard rather than, as is more commonly advocated, by having man adopt woman's. Others would shift toward freer divorce or toward increasing responsibility toward children, and sanctioning as moral any union which recognizes its responsibility in this respect. In contrast with present marriages, which are too often commercial or legal only, it is claimed that unions based on love and such responsibility for children would give better children and insure more genuinely moral relations.

It is scarcely probable that society will change the double standard by adopting what is meant in this connection by the man's standard. Even if the stricter standard for woman was originally based largely on property conceptions, it has, none the less, proved its right, not by increasing man's privileges, but by establishing woman's dignity. There is, however, one qualification on the other side. The reader of Forel and Havelock Ellis will not hastily assume that woman's standard is neces-

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sarily perfect in all respects. It is possible that sometimes sex indifference is mistaken for a positive virtue instead of being regarded as a defect—as it is from the point of view of family life.

As regards proposals for freer unions regulated by responsibility for children, no one who reads Ellen Key, the ablest representative of this doctrine, can fail to recognize that a profound appreciation of woman's personality and of the importance of the child underlies her thought. The belief that the way out lies in the direction of emphasizing, rather than minimizing, the importance of sex and motherhood in woman's life will commend itself to many biologists and psychologists. Her insistence that moral progress lies along the lines of increasing the consciousness of responsibility for the child, and that this increasing responsibility, if taken seriously, would mean a higher level of family life than is found in perhaps the majority of cases, will be recognized by the moralist as in accord with the general line of moral progress from external to inner responsibility. The defects in her treatment, as I see them, are due to an inadequate psychology of love and to an overemphasis upon the individual aspect of personality. "A person can, therefore, no more promise to love or not to love than he can promise to live long" is her statement. This regards love as chiefly an emotion entirely out of control of choice and will. It makes this emotion the test of the morality of the sex relations; it believes this to be the best guarantee of the birth of better children. I conceive this to be bad psychology. Undoubtedly the thrill of emotion is only partially subject to control. None of us may be able to avoid the quiver of fear when thunder crashes, or the beginnings, at least, of anger at outrageous treatment; but we say it is the achievement of character to control these emotions, and the brave man stays at his post in spite of thunder. Conversely, the will may indirectly do much to control the conditions under which emotion is likely to be felt. The man who looks too long may get involved beyond the power to stop,

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but the man of character will know when to stop, and will avoid situations that are dangerous. And, on the positive side, love stands for much more than emotion. It is the resolute purpose to seek another's good. Such resolute purpose can be maintained even when physical attractiveness wanes and the thrill of emotion no longer is hot in the blood. It will show itself in crises of sickness or great need, although in the every-day round of events it may easily be subconscious. Such a purpose and the gradual effect of habit in adjusting personalities to each other, so that as ideas, joys, and sorrows are shared a companionship far more stable in its basis than the passion of youth supervenes, is the psychological ground for the moral ideal of life-long marriage. And when we add to this the importance to the child of two parents, rather than one, we have the basis on which, in the great majority of cases, the institution in substantially its present form is, I believe, likely to remain as the ideal.

But even could love be so controlled, Key holds it ought not to be: The life-tree of a human being, in her opinion, is like the trees of the forest, not like those of a formal garden. "Its beauty depends upon the freedom of the boughs to take unexpected curves." "One branch unexpectedly shoots out and another unaccountably withers." Personality is the ultimate test of moral value, and "unconditional fidelity to one person may be just as disastrous to the personality as unconditional continuance in a faith or an employment."

This is a half-truth. Unconditional fidelity to one who, by persistent adultery, cruelty, debauchery, makes decency, self-respect, and proper conditions for children impossible, if it is ever justifiable as an act of voluntary renunciation in certain exceptional cases, is no general principle of ethics and ought not to be required by law. The time is soon coming when an awakened conscience will regard venereal disease as an axiomatic bar to cohabitation, and, unless innocently contracted, as ground for divorce. But to admit and insist that fidelity under such

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conditions is not demanded by good ethics is very different from setting up as our standard the trees of the forest. Civilization, after all, is a garden. No one may consider his own needs apart from his dependence upon all and the dependence of others upon him. Many a branch which might grow in a forest must be cut in a garden. Personality, in its profound meaning, is indeed an ethical standard; but this meaning requires us to consider not merely impulses and tides of emotion, no matter how clamorous, but also the values of poise and self-control, of high-minded justice and scrupulous reverence for other personalities.

The fact is that there are certain fundamental instincts and ideal needs in man and woman which are better met by the exclusive relation of man and woman, and by their permanent relation, except under special circumstances, fairly well provided for by present laws. There is an instinct of jealousy, or at least a sentiment, in the average man and woman, which is exclusive and does not tolerate a divided affection. The story told by a settlement worker is true in large part to human nature. A woman came into a New York settlement house, and while waiting for an interview attracted the notice of a resident passing through the room. The resident spoke to one of the other neighbors and said, "What is the matter with that woman over there? She doesn't look happy." "No," said the neighbor, "she ain't. She's married and has a good husband, but he lives with another woman and it annoys her." When we add the fundamental need of the child for two parents, not merely for life's beginning, but for life's development; and finally when we add the need which the parents, on their side, have not merely for prevision and care of infancy and children, but also for the friendships and renewing contacts with youth, we have the main reasons why the ethical ideal of exclusive and permanent unions is likely to maintain itself.

But while the general form of the family may remain, it is necessary to direct emphasis upon its positive values, rather than upon the negative. It is much more important

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to insist that the right parties marry, than to insist that married persons shall never separate. If we emphasize negations, let us at least place them where they will be of most use. It is more important, under existing conditions, to provide against marriage which will communicate disease, against hasty marriages, against marriages which can never hope to bring sound, healthy children into the world, than to allow such people to marry indiscriminately and then inveigh against the evils of divorce. And even these preventions can be made effective only by providing positive agencies, social, economic, educational, for promoting right marriages.

So far as children are concerned, evidently the emphasis required for the middle class and professional family is different from that required for the working-class family. The former tend to marry too late and to have too few children—the latter to have too many. The ethical emphasis for the former needs rather to be placed upon the larger social significance which the family has for community life. Our old negative morality is helpless here. In placing the family morals so largely upon certain ascetic conceptions of sex, or in trusting economic pressure upon woman to induce her to marry, the older morality could offer no counteractive to the modern woman's love of freedom, to the opportunity for self-support, and to the modern man's financial ambitions or love of ease. City conditions complicate the problem by their tendency to postpone marriage. The census figures show that in the city out of one hundred between the ages of twenty and twenty-four there are seventy-two single and twenty-six married, as compared with sixty-two single and thirty-six married in the country. Between the ages of twenty-five and twenty-nine we find in the city forty-four single and fifty-four married, and in the country thirty-five single and sixty-two married. This postponement is due in part to greater cost of beginning a home, in part to the desire on the part of young people to begin in a more ambitious way, owing to the patterns of expensive living constantly

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before them, and in part it may be to the greater difficulty in making acquaintance on the part of those who have come to the city from other districts, and to the superior opportunities for comfort in single life which the city affords; yet a further factor in the case of many is the inability of the middle-aged and older members of the family, under modern industrial and commercial conditions, to support themselves, and the consequent burden imposed upon the younger members. All these factors make against family life. They work against the entrance upon family life at an age when there is greater plasticity; they tend to place a greater strain upon the chastity of young men, and to unfit them for fidelity in their later marriage relations. Nor is the effect upon young women less present, though in different fashion. The longer marriage is postponed after the normal period of say twenty-one to twenty-five, the less inclination is likely to exist for it, the less the power of adaptation to its conditions, and, in case of women employed in many occupations, the less likely is the physical condition suited to find delight in motherhood.

"Why has Mr. Smith changed his occupation from railroading to work in a bank when he seemed to be so much interested in the former?" asked a lady of one of her acquaintances who was himself in the railroading business. "I am afraid I am responsible for that," was the reply. "I told him that if he stayed in the railroading business he could not marry until he was thirty-five." I remarked to the lady that this seemed to me to imply a very exaggerated standard of what was necessary for marriage. "Yes," she answered, "it is a pity that young people should think so much of pleasure as to miss happiness."

But it is not merely missing happiness. For those who are sound and clean, strong and vigorous, it is one great opportunity of service to the future of their country and its ideals. We must think more of the larger issues involved.

Among the working-class families the ethical problem is very different. It is not a demand for greater freedom,

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but for greater responsibility, which is heard most often in the courts of domestic relations. In the experience of social workers the great complaint is that of failure to support or of outright desertion. In many cases there is too strong a correlation between rapid births and rapid deaths to be ignored. If, therefore, one is to help the morals of the working-class family, the raising of the standard of living is evidently the most hopeful line of attack, whether this takes the individual form of better training and education of both boys and girls, or the form of public control of housing and sanitation, of public insurance for unemployment, accident, and illness, and ultimately of a juster distribution of gains.

Should the poor be taught also directly how to limit the number of children? This is a point actively in dispute at the present time. American law makes such instruction a criminal offense. In England information is available to married persons. In France there is no restriction. Many writers are strongly opposed as to the ethics of the problem. Forel is as decided upon one side as Fœrster upon the other. On the one hand, it is urged that all the so-called upper classes have knowledge and act upon it, and that the present excessive birth-rate among the poor keeps them in poverty, causes ill health of mothers, and increases infant mortality to a shocking degree. On the other hand, it is urged as strongly that the proposed remedy is worse than the disease, since it proposes to free men from the necessity of any control over their senses. One point is agreed upon by both parties, that there are evils in the present situation, and that, as the standard of living rises, the family tends to assume a size which gives the best opportunity for the health and care of all concerned. Finally, as we have noted, the standard often rises too high, and the family passes out of existence. Perhaps the happy medium is more likely to be secured if we place our emphasis upon the positive values of health and opportunity for both mothers and children, if we aim primarily to raise the level of intelligence and consideration. Excessively large

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families are not the rule after the first or second generation of immigrants.

Will the new ethics of the family favor a more closely knit economic unit or a greater economic independence of the woman? Will the tendency be for the woman to enter more and more the field of production, or should stress rather lie upon a better scientific knowledge for consumption and home work? Shall the public take over more of the parental functions, as it has already taken over so much of sanitation and education, or shall it, by payments to mothers, emphasize home values? Each of these alternatives claims its advocates, but, as Mr. Rubinow has so clearly pointed out, the problem of economic independence is not the same for the middle and professional class woman as for the working-class woman. For the former, economic independence means freedom to enter some congenial occupation. For the latter, on the other hand, it would ordinarily mean work in factory or shop under conditions which are likely to be physically exhausting and not mentally stimulating.

With the middle class or professional family there seems no reason why all should follow a uniform rule. On this I venture to repeat what I have written before: "If both husband and wife carry on gainful occupations, well; if one is occupied outside the home and another within, well also. Which plan is followed ought to depend on which plan is better on the whole for all concerned. And this will depend largely on the woman's own ability and tastes and upon the number and age of the children. But the economic relation is not the essential thing. The essential thing is that the economic be made subordinate to the larger conception of a common good."

As regards those women who would enter factory and shop, there are probably already too many rather than too few employed. Legislation which decreases the number of hours is important, so far as it goes, but I cannot believe that, for the great majority of women, such outside work is either necessary or desirable from the point of

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view of their own lives or the welfare of the family. There is usually no great objection on the part of the husband in working-class families to the extra wage, although not all husbands take such a high stand as the husband of my neighbor's laundress. He declares his principle to be that he will not live with any woman who does not support him. This might be regarded as standing so erect as to lean backward.

The great point on which more positive ethics for the working-class family should center, I repeat, is a higher standard of living, a higher wage and better house, better opportunities for play, and longer and better education for the children. The striking testimony of Henry Ford as to his experience may not warrant us in any sweeping optimism that a minimum wage of five dollars a day would be a key to every form of family difficulty. It is doubtless true, as claimed, that prostitution may not be in large measure the simple consequence of direct economic pressure upon the woman worker. None the less it is true that prostitutes are not recruited in any large proportion from the well-to-do or the well-educated classes. Children who grow up in a comfortable home with intelligent parents have a multitude of fences and supports about them to steady them through the troublous years from childhood into manhood and womanhood. The lack of privacy, decency, comfort, and of resources in which great multitudes of our city children are now brought up is a far stronger menace to family life than any ethical—or unethical—theory or any frequency of divorce, and when we have remedied some of these conditions, we can speak more confidently as to the next thing.

On the question of public care versus home provision it may seem that the tendency is decisive. The nurse is better trained than the average mother; the teacher is far better informed than either parent. Industry removes the father from the home; in well-to-do families it takes active occupations away from the wife, and in poorer families forces the mother into outside occupations; if, now,

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in addition science deals the last blow by saying that children can be better provided for collectively, are we not putting our money on the wrong horse if we back the family?

For one, I am not in love with the alternative. I do not see in our modern hours of industry, our preposterous flats and city crowding, the ultimate goal of civilization. I do not think children can dispense with parents. Still less do I think parents can afford to lose the responsibility, the direct education, and the joy of association with children.

In a word, to quote Ellen Key once more, "It is not the family that ought to be abolished, but the rights of the family that must be reformed; not education by parents that ought to be avoided, but education of parents that must be introduced; not the home that ought to be done away with, but homelessness that must cease."[2]

If our present industrial trend were inevitable and irremediable, I doubt if it would be worth while to discuss the ethics of the family. But this Conference does not easily admit bad conditions to be inevitable. It has attacked child labor. It has seen the beginning of aid to mothers in keeping their families together. It has seen the hours of many kinds of labor reduced to permit home life. City housing may seem so tremendous an obstacle that it cannot be overcome, but though I do not expect to see cities of homes replace cities of flats, there may be some of our number who will. Eugenics is likely to make mistakes, but it shows signs of promise. Great employers of labor do not all, like the official of the steel corporation, regard it as "a purely academic question" whether a twelve-hour day permits family and civic life.[3] Higher education will perhaps not always insist upon identical curricula for men and women. Democracy in national life steadies as it grows older. So will democracy in family

[2] Ellen Key, Love and Marriage, p. 240.
[3] *Iron Age*, February 22, 1912, p. 482.

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life. The ethics of the family may, therefore, frame a positive program of freer discussion and education. It may set as its ideal higher standards of fitness for marriage, of equality, fidelity, and affection in marriage, and of joy in children. It may magnify not only the mission of the soul to refine the sense, but that of the sense to give power and enhancement to the soul. And finally it will not need to adopt Plato's grades of value with their implied depreciation of family relations. All men, says Plato, crave immortality. Some seek for immortality through the offspring of their bodies; others are creative in their minds and their offspring is the nobler. Rather we may say the nobler ideal for men and women is to be creative in both mind and body. Certainly the family will not thrive by denying either mind or body, but by uniting the two.

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THE PREVENTION OF WAR.

C. D. BROAD.

ON July 10 of the present year the *New Statesman* issued a special supplement on the *Prevention of War*.[1] It was prepared by Mr. L. S. Woolf for the Fabian Research Department; and it is, so far as I know, the only good thing that has up to the present resulted from the war. But it is a *very* good thing. Pacifists (among whom I number myself) tend to have a very serious defect. They tend to forget that other people are not and are not likely for many years to become as sensible as themselves about international questions. Now it is no more use to argue for pacificism on the assumption that other people are going to be very reasonable, than it is to argue for free trade on the assumption that most nations will shortly become free-traders. If pacificism is to be of any practical use it must enunciate and defend a course of action which is likely to appeal to people most of whom are full of national and patriotic sentiments, however evil and silly we may consider such sentiments.

Now Mr. Woolf has steered his course with extraordinary ability between the rocks of idealism and the shallows of cynicism. To the cynic on international matters—the man who takes his knowledge of history from the Sunday papers and his maxims of human conduct from Mr. Bottomley and similar moral teachers—Mr. Woolf presents masses of historical evidence for the comparative success of many international agreements and for the fact that the vast majority of them have been kept even in the present war. *E.g.*, in spite of the great advantage in modern warfare of an unannounced attack none of the belligerents omitted the formality of a proper declaration

[1] "Suggestions for the Prevention of War." Special to *New Statesman*, Vol. V, No. 118, London, 1915.

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of war; and each belligerent is so convinced of the importance of international law as to spend endless ingenuity in proving to itself and to neutrals that it is acting in accordance with law and that its enemies are flouting it. And, on the other hand, as we shall clearly see, Mr. Woolf is under no illusions as to the reasonableness of mankind in international relations. His scheme abounds in options, alternatives, and mere permissions in place of commands, to meet the actual jealousies and egoism of nations.

One other merit, closely connected with that just mentioned, must be noted before we proceed to give an outline of Mr. Woolf's scheme. Discussions about international questions suffer to an aggravated degree from the defect to which all political discussions seem liable, viz., that they abound in sweeping generalisations made on the most flimsy of data. The whole subject is enveloped in clouds of what an eminent moral philosopher of my acquaintance terms "loose gas." Mr. Woolf's great merit is that he is never vague; all his statements are most carefully guarded and historical chapter and verse are given for every one of them.

Mr. Woolf begins by disposing of the commonplace that people always will want to fight, and that so long as they do so it is useless to try and find a substitute for war. He replies that very few people want to fight under normal circumstances: we may remark that within a few days of the war many English papers were against our intervention (including that very representative journal *Punch*) and the German Social Democrats were holding meetings in favor of peace. But, if disputes be allowed to drag on, a moment comes when people do want to fight, or can be very easily made to think so by interested persons; and then war is inevitable. Thus, while it is true that if everyone always wanted to fight wars would be inevitable, the fact is that most people generally do not want to fight, and machinery is needed for settling disputes before they give rise to the psychological conditions under which alone civilised people *will* fight. Mr. Woolf also

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cautions us against thinking that the present war is something unique in anything but size and cost; to think of it as "the war that will end wars" or as "the end of all things" is simply to repeat a fallacy of historical perspective which has been committed by the contemporaries of every other striking event.

Having shown that there is nothing intrinsically absurd in his task, Mr. Woolf proceeds to analyse the most usual causes of wars. We may suspect that disputes which arise from one kind of relation between nations will be capable of a mode of settlement which will not apply to those which arise from relations of another kind. He distinguishes four kinds of relation which may lead to disputes. (1) Legal relations (boundaries, interpretation of treaties, etc.); (2) Political relations (subject races, etc.); (3) Economic relations, and (4) Questions of honor. We may remark in passing that (2) and (4) are not always easy to distinguish; that all other disputes if not quickly settled lead to (4); and that it is chiefly when people can be persuaded that questions of honor are involved that they can be got to fight. I think we ought to add that people are sometimes moved to fight over abstract questions of right and justice where neither their own interests nor honor are involved. No doubt the motives of most Englishmen who wanted us to fight Germany were very mixed, but I am sure that many people were more moved by the purely abstract question of the violation of the neutrality of Belgium and the alleged cruelties of the Germans in that country than by any other consideration. This is of course a morally reputable motive, however much it may lend itself to hypocrisy, and however carefully it ought to be checked by the consideration whether intervention will really do more good than harm to the injured third party in particular and to humanity in general. This motive is also peculiar in the following respect. If we are to have a reasonable society of nations all the other motives must as far as possible be weakened, but this motive must be strengthened. Nations must be much

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less prepared to make sacrifices for their supposed interests and prestige and much more prepared to make them for the maintenance of abstract justice and the sanctity of agreements if an international authority is to have the power over recalcitrant or dishonest nations which the state has over its hooligans and rogues. At present a patriotic man is much oftener one who wishes his country to be as grasping as a miser and as touchy as a *parvenu* than one who would like it to show that forbearance and unwillingness to insist on one's extreme rights which are the marks of a Christian gentleman.

We must now consider the various kinds of international assemblies and their functions which Mr. Woolf enumerates, and the analogies between them and the internal institutions of a single state. We may distinguish first: Congresses or conferences and tribunals. These correspond to the legislature and the judiciary of a state. But legislatures have two different functions; they make and alter the constitution of the state and they promulgate general laws for regulating the relations of citizens. *E.g.*, the House of Commons acted (as we may say) as a *Convention* when it passed the Parliament Bill and the Home Rule Bill; it acted as a *Legislature* when it passed the Insurance Bill. Now, Mr. Woolf says, since the Congress of Vienna there have been international bodies fulfilling each of these functions. The Congress of Vienna itself acted as a legislature when it laid down the rules for navigable rivers; and the Geneva Convention acted similarly when it laid down certain rules of war. Perhaps the main error of congresses acting as legislative assemblies has been to deal much more with rules of war than with rules of peace. War being a state of affairs when people are morally at their worst and mentally scarcely responsible for their action, rules about warfare have the maximum chance of being broken; and the breach of them reflects a certain discredit on *all* rules laid down by international authorities. Moreover one cannot help feeling that there is something slightly ridiculous in the *matter* of many of the

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rules of war, and that they must largely be defended on the classical grounds given by a college tutor—after all there must be rules of some sort. It is difficult to believe that *apart from the rule* it is very wicked to poison soldiers *without* blowing them to pieces but perfectly harmless to poison them if you *also* attempt to blow them to pieces. And a rule which it is only wrong to break because you have agreed to keep it is almost certain to be broken in any time of stress. Congresses have been most successful when they have acted as makers and alterers of the Constitution of Europe. The Congress of Vienna, as we know, did not shine in this respect. In the first place it hovered between two incompatible theories; one that Europe was to be a confederation of states, and the other that it was to be under the hegemony of the four great powers. The other difficulty was one that still threatens to wreck efforts at peaceful settlement of difficulties, viz., the fact that states as at present constituted do not coincide with racial and national divisions. Internal troubles may threaten the peace of Europe, but no European nation cares to allow outside interference in its dealings with its own subjects.

Mr. Woolf argues that a satisfactory international constitution can hardly be made until there is some general agreement as to the treatment of races as opposed to states. Yet it is difficult to imagine any strong nation like England, or Germany, or Russia allowing interference with its treatment of Irishmen or Poles or Finns. Nevertheless he sees in the diplomatic history of the nineteenth century distinct traces of the development of a view that the internal affairs of a state are neither (a) entirely its own business nor (b) the business of any *one* other state, but that (c) they are the business of Europe as a whole if they begin to threaten the general peace. In support of this opinion he quotes (i) the setting up of the Greek kingdom against the wishes of Turkey; (ii) the settlement of the difficulty (about foreign recruiting of insurgents) between Greece and Turkey in 1869; (iii) the Balkan question and the

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Russian intervention of 1876–78; (iv) the neutrality of Luxemburg; and (v) the Morocco question of 1905.

It is of some importance to consider these cases in a little detail to see what conclusions they really support. Mr. Woolf admits that in the main the powers maintained in theory the view that they were only mediating between sovereign states. But he argues that they really meant more than this. The destruction of the Turkish fleet at Navarino was a rather strong "suggestion to a sovereign power"; and the Greek boundary question was settled against the wishes of Greece and Turkey by armed force. He argues that in every case except one (the Russo-Turkish war) the conference managed to keep the peace (a) between the nations with whom the dispute started and (b) between the interested nations (*e.g.*, England and Russia) who were among the powers intervening. And the breakdown in the seventies he considers makes for rather than against his view in two ways: (a) Russia only went to war with Turkey when the conference rejected her suggestion that they should unite to enforce their decisions, *i.e.*, when the conference *refused* to act as an international constitutional authority; and (b) when Russia tried to play for her own hand the powers insisted on acting as an international authority and compelled the revocation of the treaty of San Stefano. This is true enough, but it is necessary to insist on three points if we are not to overrate the analogy between these historical examples and the internal procedure of states. (1) The plan was most successful when the nations whose relations were dealt with were weak and backward as compared with the rest. The only apparent examples of great powers submitting to the decision of a conference are Russia, when she was exhausted by the Turkish war, and France over Luxemburg and Morocco. In the first case she had hardly recovered from her defeat by Prussia; in the second she was in no condition to face Germany. Thus none of the examples are very good instances of a really strong power bowing to the decision of a majority because it believed

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such action to be right. (2) The weakness of the analogy also comes out in the fact that, as Mr. Woolf admits, Greece and Turkey were not represented at some of the conferences that had the most important influence on their relations. (3) Nevertheless we must not forget that the analogy here is with *constitutional* questions in a single state. Unless we can say that the behavior of the Ulster minority over the Home Rule Bill wrecks the view that any changes in the constitution of a state can be brought about without civil war we have no right to hold that the fact that in Mr. Woolf's examples nations generally gave way only to *force majeure* wrecks the possibility of peaceful acceptance of international legislation.

On the general question of conferences as legislatures and as constitutional conventions Mr. Woolf comes to the following conclusions: (1) Generally conferences have only settled details when the basis of settlement has already been agreed upon by previous legislation. This is undesirable. The question whether a dispute shall be referred to a conference or not ought not to be a question for negotiation, but this procedure ought to be insisted upon. On the other hand, as we shall see, Mr. Woolf holds that it is unreasonable to insist that nations shall *abide* by the decisions of a conference on all subjects. (2) It seems essential that something less than absolute unanimity shall be demanded in order to make the decision of a conference binding. The rule of unanimity has generally been defended as the only one consistent with the independence of sovereign states. But this is merely a means of making all conferences nugatory from the beginning. As we may perhaps put it, though the *antecedent* volition of a nation is to get such and such a decision, its *consequent* volition, if it honestly enters a congress, is to abide by the decision of the congress; hence its consequent volition is not contradicted and its sovereignty is not abrogated if the decision be contrary to its antecedent volition. With Mr. Woolf's attempted solution of the problem: How to represent each nation in a conference

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in such a way that it is reasonable for each to accept a majority decision—we will deal later.

At present let us consider his views about international tribunals—the *analoga* to judicial bodies in single states. With these are clearly connected the questions of arbitration and treaties. Treaties are comparable to contracts between individuals in a state. Now difficulties may arise over treaties in three ways. (a) There is no recognised judicial authority to interpret treaties when disputes arise as to their application to particular cases; (b) There is no authority to enforce them; and (c) Circumstances change and treaties may become unfair. Yet the maintenance of the *status quo* may be to the advantage of one party who will insist on it, while it may be disadvantageous to the other party and to humanity—*e.g.*, France and England have a great interest in maintaining the *status quo* in the Low Countries, Germany had a great and growing interest in upsetting it. This does not make France and England specially virtuous and Germany specially wicked, but it produces a state of affairs very hostile to peace. An unalterable treaty is, like an unalterable constitution, the surest means of war; for it may legitimately become intolerable to one of the parties and there will be no way of changing it except by an open breach and the risk of war. The suggestion has been made of fixed time-limits in treaties. The advantage is that they provide a fair means of altering treaties with altered conditions. It can hardly be part of the eternal order of things that Belgium and Holland must be independent because it would be dangerous to France and England to have Germany seated there. But it would be grossly unfair if Germany is to alter the arrangement, as she tried to do, just at the moment most convenient to her. A time limit allows a fair and peaceful alteration. But it has the grave disadvantage that it raises afresh a thorny question which has perhaps with difficulty been set at rest; and the time just before a treaty comes up for reconsideration would always be a time of especial uneasiness.

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One of these difficulties, it seems to me, could be avoided if it were arranged that the question could only be reopened at the stated intervals if one of the parties gave notice that he wished it reopened. Unless the grievance on one side were very great both parties would probably prefer to let sleeping dogs lie.

But the main interest of treaties for Mr. Woolf is that they necessarily transform vague political relations into legal ones and thus make arbitration possible. As long as there is no recognised judicial body to interpret them in disputed cases this does not greatly help us towards peace, but once such a body is constituted the existence of treaties is a great guarantee of the possibility of peaceful settlement for certain differences. We will therefore turn to Mr. Woolf's views on arbitration. This section is perhaps the most important in the paper. High hopes have been built on compulsory arbitration, yet most of us can see that there are certain disputes which it is not reasonable to refer to arbitration. Mr. Woolf makes two very important distinctions here: (i) between two quite different senses of arbitration, and (ii) between the kinds of disputes that are and those that are not suitable as subjects for arbitration. An international arbitration court may be expected to do either of two things: (a) To decide on questions of law and fact; (b) To give a fair-minded judgment in settling some dispute that cannot be reduced to legal terms.[2] Now it is to be noted that it is only in cases of the first kind that arbitration has been successful. Nations are prepared to submit questions that can be stated in terms of law and fact to an international tribunal and to abide by its decision; they are not prepared to bind themselves to accept its decisions in other cases. Mr. Woolf points out that this applies even to the *Alabama* arbitration; the principles of law were first formulated by negotiation in the Treaty of Washington; the subsequent

[2] Cf. the case of an arbitrator in an industrial dispute deciding (i) whether an agreement between master and men had been broken, and, if so, by which party; and (ii) deciding on a fair minimum wage for the industry.

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arbitration only considered facts and assessed damages. And this enables us to see that compulsory arbitration for *all* questions is absurd, and that it is only reasonable for disputes that can be stated in terms of fact and law. We also see that this is the true distinction between arbitrable and un-arbitrable disputes, and that the *fundamentum divisionis* is not "questions involving interest and honor" as the diplomatists have claimed. The Dogger Bank arbitration involved questions of interest and honor in the most acute degree, but the dispute could be stated in the form: What actually happened, and who was to blame, and to what extent?

Mr. Woolf's scheme with regard to compulsory arbitration is as follows. Disputes on any of the following five questions are suitable for arbitration: (i) Questions of fact, (ii) of titles and boundaries; (iii) of interpretation of treaties and international law, of claims founded on these and on alleged breaches of them; (iv) of responsibility or blame of national agents; (v) of certain pecuniary claims. But, although such questions are susceptible of arbitration, Mr. Woolf would not compel arbitration even on them because of the vagueness of international law and the partly justifiable distrust to which this leads. His plan is to compel the parties to a dispute on any one of these five questions to accept the option *either* (a) of an arbitration or (b) of calling a conference. The party demanding the conference must then state whether it wishes the conference (a) to settle the whole matter or (b) to state the principles on which the arbitration court is to decide and leave the application of them to court. In any case both parties would be bound to accept the final decision whether of the court or the conference on questions of the five kinds mentioned above.

Mr. Woolf says that the court is to determine its own competence; and that there is no special difficulty about this, for courts are constantly called upon to settle such questions. It seems to me, however, that a difficulty might arise here. Suppose that *both* disputants denied that their

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controversy was exclusively concerned with questions of the five kinds enumerated by Mr. Woolf as arbitrable, is the court to consider this point automatically, and if it finds that the question is of one of the five kinds to insist on arbitration or a conference? This difficulty can, however, be met, I think, when we consider the further development of Mr. Woolf's plan and the establishment of an international authority.

In the meanwhile we have to consider the question of a permanent court of arbitration. Mr. Woolf considers that this is *necessary*, for otherwise nations who do not want to arbitrate or to submit to a conference could avoid doing so by objecting in turn to every form of arbitration and conference proposed. We therefore need a permanent court to which questions of these five kinds shall be automatically referred if the disputants cannot agree on any other method of settling their differences. But, apart from this function, Mr. Woolf considers that the importance of a permanent court has been exaggerated by pacifists. He thinks it important that nations should not be tied down to a single method of settling their differences, for we want to have as much experience as we can of various possible methods of peaceful settlement. Hence we only want to make reference to the permanent court compulsory if the disputants can agree on no other method that they would prefer. With regard to the constitution of the court Mr. Woolf thinks that it should be permanent so that a tradition of interpreting international law may grow up. Again the difficulty will arise that each sovereign state must have a representative, that there are many more little and backward states than large and progressive ones, and that we may fairly doubt the capability of states like Haiti and Siam producing competent international lawyers in large numbers. The decisions of the court must go by majorities and so the controversies of great and civilized states might be settled by a majority of votes from small and barbarous ones. To this Mr. Woolf replies that the small states will have to give up something, and that it is to

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their interest to do so because they have more to gain than anyone by the substitution of law for force in the settlement of international disputes. He propounds several schemes for forming a court on these principles; all of them have been discussed at the Hague and seem reasonable enough; and one has actually been accepted for the constitution of an International Prize Court.

At this point I may mention a difficulty that strikes me. Suppose that two nations agree that their dispute falls under one of the five heads, but that one wants it settled by arbitration and the other wants a conference. So far as I can see on Mr. Woolf's scheme if the nations could not agree the matter would automatically be settled by arbitration by the permanent court. This may be the best way out of the difficulty, but it gives a great advantage to a nation like England whose interest it is to take a very conservative view of international law and to insist as far as possible on the maintenance of the *status quo*. I do not see how a treaty that has become oppressive to one party is to be altered if the other whom it benefits can, by obstinately refusing to allow a conference, force the appeal to the permanent court which is necessarily conservative. Of course if a peaceful decision is to be insisted upon the option must ultimately be closed automatically on one side or the other, and it is perhaps better to favor the conservative side in the last resort. We now come to the concluding point of Mr. Woolf's scheme. This is the establishment of an international *authority*, and the rights and powers that can be given to it. It is essential in Mr. Woolf's opinion that the *general* procedure for settling international disputes should be agreed upon once and for all and should not be a matter for separate negotiation in each case. But this is compatible with making the procedure itself allow various options to the disputant; and indeed it is only by doing this that we can expect nations as at present constituted to be prepared to bind themselves to submit to one general method of procedure. Mr. Woolf's irreducible minimum is that nations should bind

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themselves (1) to set up an international tribunal, (2) to refer all questions of the five heads mentioned above either to a conference, or to an agreed tribunal created *ad hoc*, or to the permanent court. If they fail to agree on any other method they *must* refer these questions to the permanent court. (3) To refer *all* other questions to a conference for examination and report. They must agree to accept the decisions of the conference, special tribunal, or central court in case (2); but they need not do so in case (3) if the question affects either (a) territory, (b) internal laws and institutions, or (c) independence. The option of war *after* reference to a conference is thus left open on those questions which most deeply stir people at present, and this seems necessary if nations are to enter into this general undertaking with any intention of keeping to it.

If a permanent international authority were established one of the difficulties that I have mentioned would be eliminated. If two nations had a dispute and both thought that it involved other than arbitrable questions they would still have to refer it to the international authority for discussion and report. If it were anywhere near the line between arbitrable and non-arbitrable questions the authority could then ask the permanent court to decide whether it were arbitrable or not. If the court decided that it was the disputants would be compelled to accept arbitration or a conference whose decisions would be binding; otherwise the international authority would proceed as in the other non-arbitrable questions to report and suggest. Similarly I imagine the permanent court would have to decide in doubtful cases whether a dispute did affect territory, internal laws and institutions, or independence; and consequently whether the decision of the international authority was binding.

The question now arises: How is the international authority to be constituted? The difficulty which we found in constituting an international court where a majority decision shall be binding recurs here in an aggravated form. Decent people do not object to their nation being bound in

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decisions on fact and law by a majority of jurists from small states except on the ground that it is rather improbable that the jurists from small and backward states will be as competent in their business as those from the great nations. But much stronger sentiments are aroused when we deal with the submission of a great state to a majority decision on questions that are not wholly ones of law and fact. This strong feeling is partly legitimate. Small states form a class whose members have certain peculiar and sometimes undesirable interests and characteristics, and they might vote together on non-legal questions under the sway of these special interests. And again we might easily get a large majority of the people in the world forced to obey on doubtful questions the representative of a small minority consisting of the most backward of peoples. On the other hand, it seems essential that the members of the authority should represent governments and not peoples; for, as Mr. Woolf points out, there is a homogeneity between the governments of all civilised and even semi-civilised peoples which is totally lacking between the peoples themselves. It is therefore essential to weight the representatives of each government in some way (*e.g.*, by giving them so many votes) that shall roughly correspond to the importance of the people whose government they represent. Mr. Woolf suggests a method of doing this based on that agreed to by the Hague Conference in constituting an international prize-court. We may add, what Mr. Woolf does not mention, that it will be necessary to have some arrangement for periodically overhauling these "weightings" and that these periodic overhaulings will lead to very delicate questions, *e.g.*, the representative of Japan would need to have a very much larger number of votes to-day than he would have had fifty years ago.

How far ought such an authority to be backed by force? We may impose legal and moral obligations on nations; but we need not sanction *all* of them by force but only the most important ones. Mr. Woolf suggests that the authority ought to be given power to enforce the following

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obligations: (1) That of referring all unsettled disputes to a tribunal or conference, (2) That of abiding by the decisions of a tribunal and (3) That of abiding by the decisions of a conference called *ad hoc* by two states as an alternative to appealing to a tribunal. On two other points we might recognise a moral and legal obligation; but, in the present state of affairs, might refuse to enforce it: (1) The obligation of abiding by the decisions of the permanent authority on all points not involving territory, independence, or internal laws and institutions; and (2) That of abiding by general rules of law (not affecting the above three points) that the authority may from time to time lay down by a majority vote.

This is the essence of Mr. Woolf's scheme which is well worth the consideration of all sensible and well-willing men. I will conclude by a very few further remarks.

(1) I should like to see the international authority and the permanent tribunal given one power not mentioned by Mr. Woolf. This is something corresponding to the power of punishment for contempt of court by newspapers and speakers. As soon as a matter is referred to a tribunal or conference or to the international authority it ought to be regarded as *sub judice;* full, genuine, and quite colorless reports of the proceedings from day to day should be provided for the newspapers, but all comments by them and by public speakers should be suppressed till the matter is decided. I think that there would be little difficulty in carrying this out. The newspapers of each state would be under the control of their respective governments and liable to criminal proceedings if they broke this rule. Responsible public speakers could easily make it a point of honor to refrain from comment while the question was *sub judice,* and irresponsible ones could be suppressed by the police. I see no hardship in such a procedure and I am sure that it would make enormously for peace. The press of Europe is at present a public danger in its comment on international affairs; it is partly under the control of sinister interests which want war, and it partly lives by keeping people

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in a fever of suspicion and patriotic heroics in which every international question is distorted and a state of mind favorable to war (and to the circulation of newspapers) is fomented. Nothing of the least importance will be lost and much will be gained if in place of all this hectic nonsense people are provided with a perfectly cold report of the actual proceedings; those who only want sensations will be too bored to read it, those who want information will be able to get it without the labor of constructing it from contradictory emotional absurdities. It is the absolute worthlessness of matter and motive of most of the most popular newspapers that makes one doubt the wisdom of some of the otherwise attractive proposals of the Union of Democratic Control. Sir Edward Grey and Herr Von Bethmann Hollweg may fall far short of our ideals, and their methods may strike us as dangerous and antiquated, but we may reasonably believe that their standards of morality and intelligence compare favorably with those of the average English or German newspaper proprietor.

(2) Of course Mr. Woolf's scheme will not of necessity prevent war, and he does not suppose that it will do so. Even if every nation always acts in perfect good faith the scheme leaves room for war as a last resort. And there always is the possibility that nations will not act in good faith, but will be tempted by some supposed immediate advantage to go to war without the preliminaries which this scheme imposes on all nations that agree to it. But we may fairly admit that it would provide an enormously strong check against war, and that if it were once put into force and had settled successfully a number of difficulties (which with any good luck and good will it would do) it would grow in strength with every success. Action in accordance with it would finally become habitual; the forces making intentionally and unintentionally for the state of mind under which alone wars are possible would be held in control by it and by my suggestion about the press; and we might fairly hope that there would be few

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cases where national passion rose so high as to break through it altogether.

(3) Lastly we can see that, if the international authority is to be provided with any punitive powers either military or economic, it is essential that a majority of votes shall always represent a large preponderance of military or economic force; for otherwise it cannot enforce its decisions. This provides another reason for scaling down the votes of the representatives of small and backward nations by some kind of "weighting" such as Mr. Woolf suggests.

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THE MORALS OF MONOPOLY AND COMPETITION.

HOMER BLOSSER REED.

THE changing character of morals is nowhere more conspicuous than in those of monopoly and competition. We are about to put men in jail for selling their own goods at their own prices or for selling cheaper to one man than to another. Less than a half century ago such acts of competition were considered the life of trade and a boon to the public welfare. All this is now changed and the question now comes up what can possibly be the moral and logical grounds on which such things are justified.

Underlying the changing character of morals is the conception that new conditions require new rules. It usually happens that when the conditions suddenly change old rules are applied unaltered, and are allowed to work serious havoc before their inertia is overcome and an effort made to formulate rules fitting the new situation. This state of affairs applies in particular to the morals of competition and monopoly. Within the last half century there has been an unrivaled development of industry from a simple agricultural stage to the extreme form of the factory system, or from industry as carried on by individuals each according to his preference to a condition of industry carried on by the combined efforts of many men bringing about large combinations and monopolies. But there has been no corresponding change in business methods or morals. On the contrary, competitive morals have been applied without alteration to conditions of monopoly and combination. This misapplication resulting from the unequal evolution between business morals and business conditions appears to be the fundamental cause of our present monopolies and other industrial problems engaging the serious efforts of our legislatures and courts.

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The best sources on the morals of trade with reference to the rise of competition and to the changes from competitive to monopolistic conditions or from small scale production to large scale production are the court decisions within the last century and a half. They have the advantage of representing *de facto* laws and customs as well as reflecting the morals of the conservative and enlightened public.

The opinion is often expressed that the so-called laws of competition have existed since time out of mind, are a part of the order of nature, and as such are unchangeable. There are a few old cases, however, which indicate that such a view is contrary to fact, and that the competitive system grew out of previous monopolistic conditions fostered by the mediæval guild system and by royal grants. It was welcomed because it was thought a vast improvement upon the old system and in the interest of the public. Beale and Wyman, writing of the governmental regulation of business during the late middle ages say: "Not only did the law regulate business indirectly through the courts, parliament itself frequently regulated prices of the necessaries of life by direct legislation. The great staples like wool and food were habitually regulated in this way, and the employment and price of labor was a subject of statutory provision. Thus, in 1366, Henry III, after reciting former statutes to the same effect, regulated the price of bread and ale according to the price of wheat and barley, and forbade forestalling, that is, cornering the market. In 1344 the ordinances fixing the export prices of wool were repealed after some years of trial. In 1349 all laborers were obliged to serve for the customary wages; and 'butchers, fishmongers, regrators, hostelors (*i.e.*, innkeepers), brewers, bakers, poulterers, and all other sellers of all manner of victuals' were bound to sell for a reasonable price.[1] These statutes continued in force throughout the middle ages, and until the settlement of America."[1] The explanation of this régime is to be found in the economic

[1] *Railroad Rates Regulation, p. 7.*

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conditions of the times. The respective business men had a practical monopoly in their own localities. To prevent extortion or refusal of service, either of which might be very damaging to a customer, the state had to undertake regulation. So far as a single case is evidence, a breaking away from these conditions began with the Schoolmaster's case in 1410.[2] The masters of a grammar school in Gloucester brought a complaint against another master, and said that the defendant had started a school in the same town, so that whereas formerly they had received 40*d.* a quarter from each child, they now got only 12*d.* to their damages. Their counsel contended that this interference and damage made a good action, and cited many instances of exclusive rights, especially the claim of the masters of Paul's that there should be no other masters in all London except themselves. But Justice Hill denied the claim of the plaintiffs since they had no estate but a ministry for the time; and though another equally competent with the plaintiffs came to teach the children, "this was a virtuous and charitable thing, and an ease to the people, for which he could not be punished by the law."

It would be difficult to find a better illustration of the fact that competition was welcomed because it was an "ease to the people." But without going into further detail upon the origin of the system of free competition, it may be said that in course of time there developed a fixed set of morals, customs, and habits which became crystallized into the common law and which represent what seems almost the apex of individual liberty. To give an idea of the wide range of liberties allowed in competition by the American common law we may refer to the recent case of Citizens' Light, Heat, and Power Co. *v.* Montgomery Light and Power Company. The contestants were competitors in furnishing light, heat, and power to the people of Montgomery. The defendants induced customers of plaintiff to break their contracts with it, made

[2] *Y. B.* 11, *Henry IV*, 47, 21. Wyman, *Cases on Restraint of Trade, I.*

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false statements about its credit and service, and frequently took business below cost in order to take its trade away. The court gave judgment for the plaintiff on the first count but for the defendants on the other two, Judge Jones saying:

At common law, a trader, or persons in other callings, in order to get another man's customers, could use any means not involving violation of the criminal laws, or amounting to "fraud," "duress," or "intimidation," as the law understands and applies these terms to transactions between man and man, or to his becoming a wrongful party to a breach of another man's contract. The trader may boast untruthfully of the merits of his wares, so long as it does not take the form of false statements, amounting to slander or wilful misrepresentation of the quality of a rival's product, or a libel upon the character, business standing, and credit of his rival, or an effort to induce the public to believe that the product he sells is that manufactured and sold by the rival. He may send out circulars, or give information verbally, to customers of other men, knowing they are bound by a contract for a definite term, although acting with the purpose of getting the trade of such a customer. He may use any mode of persuasion with such a customer, keeping within the limitations stated, which appeal to his self-interest, reason, or even his prejudices. He may descant upon the extent of his rival's facilities compared with his own, his rival's means, his insolvency, if it be a fact, and the benefits which will result to the customer in the future from coming to the solicitor rather than remaining where he is. He may lawfully, at least so far as his rival is concerned, cut prices to any extent, to secure his trade. So long as what he does is done to the benefit of his own trade and, in taking over the customers of another, he keeps within the limits heretofore defined, he is safe from legal restraint at the instance of a competitor in following "the law of competition," which takes little note of the ordinary rules of good neighborhood, or abstract morality. The person whose customers are thus taken from him cannot complain, for no right of action lies in his favor against him who solicited his customer, since the solicitor exercised a legal right in a legal way.[3]

The judge giving this opinion has lost sight of the public interest in the competitive system which was originally designed for its benefit. He takes no account of common morality. He simply states what the common law allows and gives his decision accordingly, which is clearly a crystallization of the *laissez faire* policy in business.

[3] 171 Fed. 553.

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The liberties which he allows function well in such a competitive system as that in which they developed. The traders were small, had approximately equal resources, and each one was more or less for himself. If one trader cut prices, or gave rebates, or granted special favors to particular customers, or slandered his rival, or untruthfully boasted of the merit of his wares, his competitor could do likewise with equal effect. If a customer could not get satisfactory terms from one trader, he could do so from another. The public took no interest in this war of competition except to get the advantage of good bargains. If any one was injured it was the trader rather than the consumer. There were of course evils such as numerous bankruptcies and periods of under- and of over-production, but on the whole the system was worth more to the public than it cost, and one positive merit it did have was that it allowed full freedom to individual capacity and ingenuity.

But if we introduce into this competitive system of approximately equal individual traders a large combination of individual traders having an enormous capital, then the competitive morals as practiced between the combination and the individual trader have an altogether different effect because of the inequality of capital. In a siege of price-cutting, in getting information of the competitor's business from their employees and from those of the railroads, in securing favorable advertising in the form of disinterested news and editorials, in delaying litigation by appeals, and in many other instances the combination can get advantages which are wholly denied to the small trader because of his small capital. The small trader may be a better manager then any one in the combination; he may produce cheaper, treat his customers more considerately, give prompter service, and offer a superior quality of goods; but no matter what his merits are, he cannot possibly overcome the superior capital of the combination which as a consequence secures a monopoly. It then has power to oppress the public

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with unreasonable prices through which it may recoup its losses from the war of competition.

When such a result occurs, we begin to hear of "unfair competition," "cut-throat and predatory competition," "tainted money," "anti-trust legislation," "the extortion of monopolies," "restraint of trade," "reasonable and unreasonable restraint of trade," and similar phrases which indicate that the problem has arisen in the public consciousness and that moral feelings have been aroused. The old adage, "Competition is the life of trade," begins to have an unsavory sound and these so-called laws of competition which have existed since time out of mind begin to be questioned. The combination is dubbed an "Octopus." But as a matter of fact the combination has done nothing more than carry out the "good, old-fashioned laws of competition," the very same methods practiced daily by those who raise the bitter cry against it. The only difference is that the combination profits, and the little trader goes to the wall. The question arises, however, whether a combination can rightfully adopt the same methods practiced by small traders in competition and whether its large capital does not create a new situation in which the old morals of competition fail to function, and whether the combination should not adopt a new set of morals commensurate with its new situation. Here there is clearly a moral problem, and to show the form which it has taken we can do no better than to refer to some court decisions on the matter. It is probable that conservatives will think the old system of competition good enough while those enlightened on new conditions will recommend a change. I shall quote first some opinions from the former class. We shall find that they are averse to making distinctions between kinds of competition, and believe competition as such a part of the unchangeable order of nature.

The Mogul Steamship case, the leading case on competition in England, gives the general trend of the conservative views. In this case, the defendants, who were

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firms of ship owners trading between China and Europe, formed themselves into an association, from which the plaintiffs were excluded, the purpose being to obtain a monopoly of the tea trade and maintain freight rates. They offered a rebate of five per cent to shippers who consigned their tea exclusively to their (the defendants') vessels, and also undertook to send special ships to underbid any vessels which plaintiffs might send. Defendants reduced rates so low that plaintiffs were obliged to carry at a loss in order to obtain homeward cargoes. To recover their losses they brought suit for damages. Lord Morris in his judgment said: "I am not aware of any stage of competition called 'fair' intermediate between lawful and unlawful." The Lord Chief Justice Coleridge said:

> It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay the trade of a particular place or district being possibly very limited, what one man gains another loses. In the hand-to-hand war of commerce . . . men fight on without much thought of others, except a desire to excel or defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business.[4]

Lord Justice Fry said:

> I know no limits to the right of competition in the defendants—I mean, no limits in law. I am not speaking of morals and good manners. To draw the line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the courts. Competition exists when two or more persons seek to possess or enjoy the same thing: it follows that the success of one must be the failure of another—and no principle of law enables us to interfere with or to moderate that success or that failure so long as it is due to mere competition.[5]

Lord Justice Bowen gave the clearest exposition of the common law on this subject. He said in part:

[4] 21 L.R.Q.B.D. 553–4.
[5] 23 L.R.Q.B.D. 625–26.

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We are presented in this case with an apparent conflict or antinomy between two rights that are equally regarded by the law—the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of the defendants to carry on their business as seems best to them, provided they commit no wrong to others. . . . What, then, are the limitations which the law imposes upon a trader in the conduct of his business as between himself and other traders? . . . No man, whether trader or not, can . . . justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction, and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it. The intentional driving away of customers by shew of violence; the obstruction of actors on the stage by preconcerted hissing; the disturbance of wild fowl in decoys by firing guns; the impeding or threatening servants or workmen; the inducing persons under personal contracts to break contracts; all are instances of such forbidden acts. But the defendants have been guilty of none of these acts. They have done nothing more against plaintiffs than pursue to the bitter end a war of competition waged in the interest of their own trade. . . . To say that a man is to trade freely but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection. But we are told that competition ceases to be a lawful exercise of trade . . . if carried to a length which is not fair or reasonable. The offering of reduced rates . . . is said to have been "unfair." This seems to assume that, apart from fraud, intimidation, molestation, or obstruction of some other personal right, there is some natural standard of "fairness" or "reasonableness" (to be determined by the internal consciousness of judges and juries) beyond which competition ought not in law to go. There seems to be no authority . . . for such a proposition. It would impose a fetter upon trade. . . . And what is to be the definition of a "fair profit"? It is said that it ought to be a normal rate of freight, such as is reasonably remunerative to the shipowner. But over what period of time is the average of this reasonable remunerativeness to be calculated? All commercial men are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future; and until the argument at bar, it might be doubted whether shipowners or merchants were ever deemed to be bound by law to conform to some imaginary "normal" standard of freights or prices, or that law courts had a right to say to them in respect of their competitive tariffs, "Thus far shalt thou go and no further." To attempt to limit English competition in this way would probably be as hopeless an endeavour as the experiment of King Canute. . . . Assume that what is done is intentional, and that it

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is calculated to do harm to others. Then comes the question, Was it done with or without just "cause or excuse"? . . . legal justification would not exist when the act was merely done with the intention of causing temporal harm, without reference to one's own lawful gain, or the lawful enjoyment of one's own rights. . . . But if the real object were to enjoy what was one's own, or to acquire for one's self some advantage in one's property or trade, and what was done was done honestly, peaceably, and without any of the illegal acts above referred to, it could not in my opinion, properly be said to be done without just cause or excuse.[6]

Along the same line as this opinion have been numerous American decisions. The following indicate the lower limits to which competition may go in America.

In Bohn Mfg. Co. *v.* Hollis, a number of retail dealers in lumber combined for the purpose of preventing wholesale dealers from selling directly to consumers or other non-dealers in localities where a member of the association did retail business. Judge Mitchell upheld the association, saying:

What one man may lawfully do singly, two or more may lawfully do jointly. The number who unite to do the act cannot change its character from lawful to unlawful. The gist of private action for the wrongful act is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendants. . . . It can never be a crime to combine to commit a lawful act, but it may be a crime for several to combine to commit an unlawful act, which, if done by one individual alone, although unlawful, would not be criminal.[7]

In Macauley Brothers *v.* Tierney, the members of a national association of plumbers agreed not to buy from wholesale dealers who sold to plumbers not members. Chief Justice Matteson justified the action, saying: "Competition, it has been said, is the life of trade. . . . To hold such action wrongful and illegal would be to stifle competition."[8]

In National Protective Association *v.* Cumming, where contestants were competing organizations of steam-fitters,

[6] 23 L.R.Q.B.D. 614–16, 618–19.
[7] 54 Minn. 223, 234.
[8] 19 R.I. 255.

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defendants caused the discharge of plaintiffs by the threat of a strike. Chief Justice Parker justified the conduct of defendants mainly on the grounds of competition, that an organization may lawfully do what an individual may lawfully do. The following extract indicates the ground of his decision:

A man has a right, under the law, to start a store and to sell at such reduced prices that he is able in a short time to drive the other storekeepers in his vicinity out of business, when, having possession of the trade, he finds himself soon able to recover the loss sustained while ruining the others. Such has been the law for centuries. The reason, of course, is that the doctrine has generally been accepted that free competition is worth more to society than it costs, and that on this ground the infliction of damages is privileged.[9]

An unusually vigorous defense of competition is found in a Standard Oil case decided in West Virginia. Defendant, the Standard Oil Company, built a pipe line through the territory of the plaintiff's line, and then refused to buy oil from producers unless they shipped it through the Standard's line, and also refused to buy any oil shipped through plaintiff's line. This ruined the business of the plaintiff. Judge Brannon held such conduct not actionable. He said:

[This] is the act of persons and corporations, by union of means and effort, drawing to themselves, in the field of competition, the lion's share of the trade. This is not monopoly condemned by law. The lion has stretched out his paws and grabbed in prey more than others, but that is the natural right of the lion in the field of pursuit and capture. Pity that the lion exists, his competing animals may say; but natural law accords the right, it is given him by the Maker for existence. The state made the Standard Oil Company, and gave it this right of being and working. . . . The defendant companies were all in common interest. Could they not unite to further their interests? Could not the Standard Oil Company buy from whom it chose? . . . Cannot the village merchant say to the farmer, "I will not buy your eggs unless you buy my calico"? Cannot the big mill owner refuse to buy wheat from those who do not ship it over a railroad or steamboat owned by him? . . . Now, these companies were furthering their interests in lawful competition with others. . . . That, in these days of sharp ruinous competition,

[9] 171 N. Y. 315.

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some perish is inevitable. The dead are found strewn all along the highways of business and commerce. Has it not always been so? Will it not always be so? The evolution of the future must answer. What its evolution will be in this regard we do not yet know, but we do know that thus far the law of the survival of the fittest has been inexorable. Human intellect—human laws—cannot prevent these disasters. The dead and wounded have no right of action from the working of this imperious law. This is a free country. Liberty must exist. It is for all. This is a land of equality, so far as the law goes, though some men do in lust of gain get advantage. Who can help it? [10]

From these cases, it is possible to form an idea, not only of the particular acts allowable in competition, but also of the general principles on which they are permitted. The former have been sufficiently reviewed. The latter seem to fall into three classes. Competition is morally right because: (1) it is the right of individual freedom, and what individuals may do singly they may do jointly; (2) it is based upon natural right and the law of the survival of the fittest, an order of nature created by the Maker; (3) it is for the best interests of society, being worth more than it costs. These principles are but reflections of a competitive industrial society which has been defended ever since Adam Smith's "Wealth of Nations." But within the last fifty years there has been a rapid change in the industrial order; a change from individual, competitive, and small-scale production to co-operative, monopolistic, and large-scale production; a movement from an undirected, unorganized, and separate control of the many to the directed, organized, and unified control of the few. The judiciary has begun to appreciate the significance and tendency of this movement. Accordingly, we have a number of cases in which the judges have ceased justifying acts of trade simply because they are due to mere competition and applying old rules to new conditions and have carefully considered whether a given act is for the best interests of society, whether it tends toward monopoly, or is only in reasonable restraint of trade.

[10] 50 W. Va. 611, 617–21.

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Without going into details, it may be said in a general way that the principles upon which this new line of decisions is based began to be laid down in the English case of Mitchel *v.* Reynolds in 1712. The defendant leased his bake-shop in the parish of St. Andrew's Holborn, to plaintiff for a period of five years, and upon a bond of fifty pounds, agreed not to open a new shop within this time. But he broke his agreement and was sued. Parker, C. J., said that since the contract was limited to a particular place and offered a fair consideration to the plaintiff it should be maintained. But a contract restraining trade generally throughout the kingdom is void, "being no benefit to either party and only oppressive." "The true reasons of the distinction upon which the judgments in these cases of voluntary restraint of trade are founded are: the mischiefs which may arise from them, first, to the party, by the case of his livelihood and the subsistence of his family; secondly, to the public by depriving it of a useful member."

The principles of distinction between reasonable and unreasonable restraints of trade are more clearly stated in Horner *v.* Graves, 1831. The contestants were dentists. Defendant, who was a moderately skillful dentist, agreed not to practice independently within a radius of 100 miles from York, in consideration of entering the service of plaintiff for five years at a salary of 100 pounds per year, to be increased annually; but within three months he started independently within the prohibited distance. Counsel for defendant argued:

> If the Plaintiff were to labor night as well as day, it would be physically impossible for him to draw all the teeth of such a district. If he leaves home, York is without the benefit of his skill; if he remains at York, patients may die at Lancaster . . . the health of the public is endangered, without the possibility of any advantage to the Plaintiff. The agreement is therefore unreasonable and void.

Tyndall, C. J., agreed with counsel, and out of these petty facts developed a most significant principle for distinguishing between reasonable and unreasonable re-

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straint of trade, a principle which has been frequently affirmed in American decisions upon questions of monopoly. He said:

> And we do not see how a better test can be applied to the question whether reasonable or not, than by considering whether the restraint is such only as to afford a fair protection of the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than necessary for the protection of the party, can be of no benefit to either. It can only be oppressive; and if oppressive, it is, in the eye of the law, unreasonable. Whatever is injurious to the interests of the public is void, on the grounds of public policy.[11]

In these two cases we have laid down the fundamental principles for the determination of monopoly and restraint of trade, a half century before the problem existed in its modern form. The public interest should be the controlling factor in determining the reasonableness of a contract in restraint of trade. Monopoly or total restraint of trade is against the public interest and is unlawful. But a partial restraint of trade, if it allows a fair consideration for the contracting parties and no more than is necessary for their protection, is reasonable and good. If it produces a greater protection than necessary, it is oppressive and void. It remains only to define more specifically what constitutes monopoly and public interest, and by what principle we may determine what a fair protection is for the contracting parties.

The definition of monopoly and public interest is rather concretely stated in Morris Run Coal Company *v.* Barclay Coal Company, decided by the Supreme Court of Pennsylvania in 1871. Five coal companies organized a selling agency which had control of the production of the respective companies and could fix prices. Judge Agnew said:

> When competition is left free, individual error or folly will generally find a correction in the conduct of others. But here . . . they have combined together to govern the supply and the price of coal in all the markets from the Hudson to the Mississippi rivers. . . . The public

[11] Bing. 733, 743.

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interest must succumb to it for it has left no competition to correct its baleful influence. . . . The domestic hearth, the furnaces of the iron master, the fires of the manufacturer, all feel its restraint. . . . Such a combination is more than a contract it is an offense. . . . Every "corner," in the language of the day, whether it be to affect the price of articles of commerce such as breadstuffs, or the price of vendible stocks, when accompanied by a confederation to raise or depress the price and operate on the market, is a conspiracy.

In another coal case, Pocahontas Coke Co. *v.* C. &. C. Co., where twenty coal operators combined in a form similar to that in the case above, monopoly is still more clearly defined. Judge Cox said:

If the direct and necessary and natural effect of a contract or combination among producers and sellers of a commodity is to restrain competition and control prices to the injury of the public when all the powers of the contract or combination shall have been exercised, the contract or combination is in unreasonable restraint of trade and against public policy. . . . A contract which is charged to be in restraint of trade is not to be tested by what *has been* done under it but by what *may* be done under it.[12]

The definition is now clear. The test of a monopoly or contract in restraint of trade against the public interest is power or tendency to control prices.

Another leading case referred to in numerous recent decisions against monopolistic practices was laid down in Massachusetts by Chief Justice Shaw in Commonwealth *v.* Alger, 1851. The question was whether an owner of land along the seashore might extend a wharf beyond a limit prescribed by the legislature, if it neither obstructs navigation nor is a public nuisance. Justice Shaw did not permit the exception since this would confuse the law, and the law he upheld on this ground:

We think it a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All

[12] 60 W. Va. 508, 524–5.

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property in this commonwealth . . . is derived directly or indirectly from the government, and held subject to the common good and general welfare. Rights of property, like other social and conventional rights, are subject . . . to such reasonable restraints and regulated by law . . . as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. . . . The power we allude to is . . . the police power, the power vested in the legislature by the constitution, to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.[13]

The good of the subject of the state or the public interest also formed the basis of a dissenting opinion by Lord Esher in the Mogul Steamship case already referred to. He said:

Unless the public has an interest in traders being left to their own judgment, and to a free course of trade, there is no foundation for the law as to agreements in restraint of trade being illegal. . . . It follows if the agreement be an agreement to violate the right of an independent trader by restraining his trade, there is a sufficient public interest which is also injured, and the agreement is an indictable conspiracy. . . . If one goes beyond the exercise of the course of trade . . . his act is an unlawful obstruction. . . . The act of the defendants lowering their freights far beyond the lowering for the purpose of any trade—that is to say, so low that if they continued it, they themselves could not carry on the trade—was not an act done in the exercise of their own free right of trade, but was an act done evidently for the purpose of interfering with . . . the plaintiff's right to a free course of trade, and was a wrongful act.[14]

The principle that property rights proceed from the state and must be used for the common good of its subjects has received a new interpretation in a recent Massachusetts case, Martell *v.* White, which has special bearing upon competition. The question was whether a voluntary association of granite-workers could, by a system of fines, prevent members from trading with plaintiff who was not a member, and so ruin his business of quarrying granite. The court denied the right, Judge Hammond saying:

[13] 61 Mass. 53, 84, 85.
[14] 23 L.R.Q.B.D. 606–10.

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To what extent combination may be allowed in competition is a matter about which there is as yet much conflict, but it is possible that, in a more advanced stage of the discussion, the day may come when it will be more clearly seen and will more distinctly appear in the adjudication of the courts than as yet has been the case; that the proposition that what one man lawfully can do, what any number of men acting together by combined agreement may do, is to be received with newly disclosed qualifications arising out of the changed conditions of civilized life and of the increased facility and power of organized combination, and that the difference between the power of individuals, acting each according to his preference, and that of an organized extensive combination may be so great in its effect upon private and public interests as to cease to be simply one of degree and to reach the dignity of a difference in kind. . . . The right of competition rests upon the doctrine that the interests of the great public are best subserved by permitting the general and natural laws of business to have their full and free operation, and that this end is best attained when the trader is allowed in his business to make free use of these laws. . . . But from the very nature of the case it is manifest that the right of competition furnishes no justification for an act done by the use of means which in their nature are in violation of the principle upon which it rests.[15]

Here, then, we have a clear grasp of the modern situation and a clear recognition that changes in the conditions of civilized life call for equal changes in business methods and principles applicable to these changed conditions, that although it may be logically inferred that what one man may do singly he may also do jointly with others, results may prove this an invalid conclusion, and the difference in conditions may be so important as to make the inference impossible.

We may now draw the boundaries of monopoly and competition as well as state the principles for determining the reasonableness of the same. The legitimacy of a given business method, or use of property, or contract in restraint of trade is to be determined by reference to the public interest or good of society, from which all rights are derived. Monopoly or contracts in restraint of trade giving the parties concerned the power or possibility of controlling prices are against the public interest and are

[15] 185 Mass. 255, 259–61.

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void. Competition, when it is an action against an individual by a combination which aims to destroy his business by a mere agreement not to trade with him, or by going beyond the ordinary course of trade, such as doing business at a loss—is against the public interest and unlawful. Under the police power, the legislature may pass any laws limiting methods of business and uses of property to any extent which they deem necessary for the welfare of the people.

It would be quite impossible to enumerate all the particular acts declared illegal both by statutes and courts within the limits thus drawn. But the mentioning of a few may aid in getting a clearer idea of unfair competition. A manufacturer or seller may not give rebates to the purchasers of his commodities for the purpose of maintaining and fixing prices.[16] He may not sell goods lower at one place than at another for the purpose of destroying competition.[17] He may not compel dealers not to purchase or deal in the goods of a rival so as to have him deal in his own exclusively.[18] He may not follow the employees of a rival and harass them while engaged in the discharge of their duties. He may not publish false and injurious reports about his rival.[19] He may not fix the prices and conditions under which dealers should sell his goods.[20] A seller as a member of an association of retail dealers may not refuse to sell goods to a non-member, or charge him higher prices than a member,[21] nor compel wholesale dealers not to sell goods to non-members.[22] And, as a member of a monopoly, he may not charge more than competitive prices for his goods under penalty

[16] State *v.* Standard Oil Company, 218 Mo. 1,442.

[17] 226 U. S. 157, Central Lumber Co. *v.* So. Dakota.

[18] People *v.* Duke, 44 N. Y. Supp. 336; Commonwealth *v.* Strauss, 191 Mass. 145. Cilley *v.* United Shoe Machinery Co., 152 Fed. 726.

[19] Standard Oil Co. *v.* Doyle, 118 Ky. 622.

[20] Cont'l Wall Paper Co. *v.* Voight & Sans, 212 U. S. 227; Dr. Miles Med. Co. *v.* Pork & Sans Co., 220 U. S. 873.

[21] Montague & Co. *v.* Lowry, 193 U. S. 38.

[22] Cleland *v.* Anderson, 66 Neb. 252.

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of treble damages.[23] All such acts are forbidden as tending toward and establishing a monopoly. But any contract in restraint of trade, or method of business is permitted by the courts when it is not a part of a monopolistic scheme nor is likely to produce such a result.

When we consider that hardly one of these acts would be denied to an individual acting singly for his own interests, and compare them with acts prohibited and allowed by the common law as expounded by Lord Justice Bowen and Judge Jones, both of whom we have quoted, we begin to see what a remarkable change has taken place from the principles and methods of individual competitive bargaining to those of co-operative and monopolistic bargaining. The courts are beginning to recognize a difference in kind between acts of individuals acting alone and acts of individuals acting jointly. The query now arises what the conditions are that account for this difference. What is the difference between competition as carried on by an individual and as carried on by a combination?

Lord Justice Bowen said the Mogul Steamship case presented "an antinomy between two rights equally regarded by the law—the right of the plaintiffs to be protected in the legitimate exercise of their trade, and the right of defendants to carry on their business as seems best to them, provided they commit no wrong to others." Did defendants commit any wrong to others? The judge answers by taking a *backward* look. He finds that in 1620 it was forbidden to drive servants and workmen away from a rival by threatening to cut their arms off; that in 1706 it was forbidden to fire with guns into a man's decoy pond for the sake of frightening away his fowl; that in 1804 it was forbidden to drive a rival's customers away by shooting them with cannon; that in 1810 it was declared illegal to drive actors off the stage by preconcerted hissing; and that in 1853 it was forbidden for a third

[23] Chattanooga Foundry Co. *v.* Atlanta, 203 U. S. 390.

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party to induce the breaking of personal contracts. "But the defendants," he says, "have been guilty of none of these acts. They have done nothing more against plaintiffs than to pursue to the bitter end the war of competition in the interest of their own trade." If they had had no such interest to maintain, and if they had injured plaintiff for the mere sake of the injury, it would have been unjust. But, since it was done for the sake of their own interests, it was just and lawful. Lord Esher, however, looks at the question from an opposite point of view. He takes a *forward* look and considers whether such competition is compatible with the public interest and welfare. He does not see that there is any permanent gain to the public in destroying a useful trader by doing business at a loss, as the defendants did, and therefore would give judgment for the plaintiff.

Thus the solution of the antinomy between equal rights turns upon the point of view of the judge. Does the act come within the scope of acts classified as wrong in the past? If not, it is right. Or does it tend to further or hinder the public good? if the former, it is right; if the latter, it is wrong. Which of these two views is based on the better ethical and logical principle?

The first essential in deciding this issue is a keen consciousness of the different logics used in these two lines of cases. It is significant that on both sides there are judges who say that the standard of reference is the public interest. The conservatives argue in syllogistic fashion as follows: Competition is the life of trade and in the interest of the public. This is a case of competition. Therefore it is the life of trade and in the interest of the public. This reminds one of Aristotle's logic, but it is not in agreement with his ethics in which he says that knowledge is virtue provided it is knowledge of the major and minor premises in their proper relationship. I think Aristotle was right. You must be sure of your major premise and then that your minor comes within the major before it is possible to draw a proper conclusion. The difficulty with the

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conservative judges is that they do not examine their premises to see whether they are true or not. They naively assume that their major premise, "competition is the life of trade," is an eternal law of nature. They then merely determine whether the case at bar is a case of competition. If it is, it must be part of the eternal order and therefore privileged. They make no effort to distinguish between kinds of competition and assume with equal naiveté that to distinguish between fair and unfair competition passes the power of the courts and of the human understanding.

In contrast with such a naive syllogistic procedure is the logic underlying the opinion of the liberal judges. For want of better terms I shall call this the functional, genetic, evolutionary, or situational logic. For the sake of brevity I shall restrict myself to the term functional. According to this method in ethics we take the view that morals are group habits formed to meet the requirements of a particular situation and are right or function satisfactorily when they satisfy the needs of the group in that situation. If a conflict arises we should discover the condition out of which it arose, find out how the old system of morals originated, analyze the new situation in which it functioned, and find the elements which made the old system satisfactory, analyze the new elements in the changed situation which impair the usual functioning of the old morals, then project an hypothetical solution keeping the good of the old system as much as possible and making changes only for the new elements in the changed situation, and finally try out the proposed solution in a practical way.

In agreement with this method we have found that the competitive system grew out of ancient conditions of monopoly and was approved by the judges of the transition period because it better satisfied the interests of the public. It did this because it allowed free range to individual incentive and capacity; and success depended, among other things, on good management, prompt service,

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considerate treatment of customers, ability to produce and sell goods of a quality and price demanded by the customers, and on capital, which, however, was only one element. With reference to the traders the system was a success because they were approximately equal in capital; and one could play "the rules of the game" as effectively as another. Under such conditions competition was the life of trade, that is, on the whole it was worth more to the public than it cost. When, however, a combination is introduced into these conditions then success depends principally upon the single element of capital against which the other elements of success in the small trader are of no avail. Competition, as between the combination and the individual trader, instead of being the life of trade, becomes the restraint of trade, the outcome of which is inimical to the interests of the public.

When, under these conditions, a judge tells us that what is right for an individual is also right for a combination, he is basing rights upon the single element of capital. He fails to see that this element in the combination destroys all the other values of the old competitive system. He assumes that a difference in magnitude does not produce a difference in kind, and he is led into this assumption because in law both the individual trader and the combination possess the common name of "person." When, however, the individual person and the corporate person are analyzed and the elements of success in each are made distinct, then such propositions fall to the ground. In general the judge who commits such fallacies fails to analyze the situation in which the morals in question function. He is satisfied to refer to cases which have nothing more in common than simply some problem of competition, and then argues that, if in the case at hand nothing was committed which was forbidden in the past, the act complained of is just and lawful. This sort of procedure is quite correct when the cases referred to and the act in question present identical situations. It is then a matter of prudence to apply to a present situation what

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has proved successful in the past in an identical situation, and only when such a motive is present in the consciousness of a judge is this reference to past cases profitable. But to say that what is lawful for individuals is lawful for combinations is wholly to ignore their respective situations and to deal only with rules in the abstract. It assumes that an old competitive rule must *ipso facto* apply to a competitive situation, forgetting that one competitive situation may be wholly different from another. A judge using this method, instead of taking the pains to analyze the differences in situation which make a rule right in one case and wrong in another, is likely to devise new arguments in defense of an old rule, such as "the survival of the fittest," "the interests of the stronger," "the right to pursue trade for one's own interest." We may accept these arguments and assume that right lies with the stronger if we remember that both individuals and combinations are members within the state, which being the strongest of all may, on Judge Brannan's principle of "natural law," crush either individual or combination, provided it is for the state's "own interests." These would be "natural acts"; for if the acts by which combinations destroy competitors are "natural," the acts of the state which is the mother of the combination cannot be other than "natural."

It is not necessary to say more in criticism of the conservatives' opinions. They are based on fallacies, and of such fallacies monopolies are an expression. How they are such we have indicated above. I wish, however, to make clear the merits and reasonableness of the opinion of the liberal judges. They are conscious of the grounds upon which laws are based, and that this consciousness is a fundamental cause of their enlightened opinions is evident to anyone who reads them. An equally fundamental factor is that they study not only the concrete situation in which the laws in question function but also their concrete effects upon society. It is this which reveals to them that a difference in magnitude makes a

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difference in kind and that a changed situation demands a new rule. This is not to be seen from *a priori* and syllogistic reasoning but is made evident by inductive reasoning from experience, from facts of observation. And by analogy, if birds must have a different sort of locomotion in the air than on the earth, and if fishes must breathe differently from horses, it is not unreasonable that large combinations should have a different method of carrying on business from a small trader. In all cases it is the changed situation that demands a new behavior. Morals are no exception to the functional character of biological behavior of which they are a part. To know this fact is more important in the administration of justice than to know law. What judges need is not so much a knowledge of law as a knowledge of philosophy, and by philosophy in this connection I mean a knowledge of the principles, logical and ethical, upon which morals are based, an awareness of the proper sort of methodology in practical reasoning.

Aside from the matter of methodology, the issue in the conflict of these cases is whether business is a matter of private interest and of private law or a matter of public interest and public law. The conservative judges take the former view, and the liberal judges the latter. The conservatives, therefore, do not see a difference in kind between the business of a private individual and that of a large combination. The liberals say that because business is affected with a public interest the combination cannot refuse service to anyone but must without discrimination serve all who apply, and further, that it cannot destroy competition by doing business at a loss. The difference in magnitude between a private individual and a corporation is important here. When a corporation becomes so large that its capital, business organization, and number of employees equals that of the government itself, and when it supplies an article of necessity to every community throughout the state's territory, it holds within its grip the fortunes of individuals quite as much

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as the state itself and is equally affected with a public interest. To anyone alive to modern conditions there can be no doubt that business combinations should come within the public law and perform their duties with the same sense of obligation as the state, that is, give service to all impartially and without discrimination. Such a régime has, besides, the economic advantage of compelling both combination and individual to succeed on their merits; for it allows the individual to engage beside the combination provided he can produce just as cheaply and sell at the same margin of profit. If, however, the individual trader cannot succeed under these conditions, it is difficult to see how the public is benefitted by his retention. The state then might allow monopoly and supply the check of competition on prices by governmental regulation.

I cannot properly conclude this paper without raising the question of the meaning of public interest which is the ethical criterion used by the liberal judges and also referred to by one of the conservatives. That an adequate analysis of this concept is necessary is evident because different judges come to opposite conclusions in reasoning from the same standard. This must be the case so long as its meaning is left to individual opinion. An adequate discussion of a better method would carry us beyond the limits of this paper.

HOMER BLOSSER REED.

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ALFRED WILLIAM BENN.

Alfred William Benn, who died on September 22, 1915, was for many years a valued contributor to this JOURNAL. He belonged to that small but notable class of non-professional philosophers (if the term be permitted), who have, throughout the whole history of English speculation, done so much for the advancement of philosophy. He was never a University professor, but he devoted his life with singular disinterestedness and consistency to the encouragement of philosophical progress.

Shortly after graduating, in 1865, at the University of London, he left England, and for the greater part of his life he resided abroad, especially in Switzerland and at Florence. Though he wrote on general literary subjects, and was connected with the *Academy* for some years, his real interests centered from the first in philosophy. He maintained a certain connection with his University, and represented it in 1911 at the International Congress of Philosophy at Bologna.

His most important work was done in the History of Philosophy, and especially in the History of Greek Philosophy, for during the whole course of his life his studies were largely directed upon the broad sweep of Hellenic life and thought. Though he had contributed articles on Greek subjects to various periodicals, it was not till 1882 that his *Greek Philosophers* appeared. This important work was followed by other books in the same department of philosophy, *The Philosophy of Greece* in 1898, *A Primer of Early Greek Philosophy* in 1908, and a *History of Ancient Philosophy* in 1912. Only last year he published a new edition, corrected and largely re-written, of his first work; and until quite recently he continued to contribute articles and notes on Greek subjects to *Mind*. In all these books his general attitude is, in a broad sense, humanistic. Though an exact scholar he was not so interested in the minutiæ of the interpretation of texts as in the human value of tendencies of thought realised in the personalities of great men. And he insisted—though the lesson was perhaps more needed in 1882 than it is to-day, it is one that philosophy would do well to bear in mind—that to study the history of thought it is not enough merely to describe a succession of ideas; one must take into account also the individuality

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of the philosopher and the *milieu* of intellectual and social forces amid which he lived. In adopting this standpoint and method he was probably influenced considerably by Grote.

In recent years, while retaining his interest in Greek philosophy, he returned to more general literary and historical studies, and published a *History of English Rationalism in the Nineteenth Century* (1906), *Modern England* (1908), and *Revaluations* (1909). His articles in this JOURNAL dealt with such varied subjects as Milton and Nietzsche, Pascal's Wager and the Ethics of Evolution. In almost all his work it is possible to discern the influence of the same spirit of humanism that distinguishes his study of the Greeks.

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BOOK REVIEWS.

THEISM AND HUMANISM. By The Rt. Hon. A. J. Balfour, M.P. The Gifford Lectures for 1914. London: Hodder & Stoughton, 1915. Pp. xv, 274.

This brilliant book, all the more remarkable for the circumstances under which it appears, would be a noteworthy philosophical event at any time. Mr. Balfour begins by saying that he does not pretend to construct or outline a metaphysical system. While in substance a protest against the æsthetics, the ethics, and the epistemology of "Naturalism" (by which the author means the natural selection of primitive Darwinism), the book neither discusses nor mentions by name any system of metaphysics. What Mr. Balfour wishes to refute is not the philosophy of any philosopher past or contemporary, but the popular philosophy which is frequently based upon the biological discoveries of the nineteenth century. The argument is briefly as follows.

We find ourselves compelled to believe in some things as *beautiful*, in some actions and feelings as *good*, and in some judgments as *true*. In æsthetics and ethics, it is admitted, no particular valuation need be universally accepted; nevertheless all men are agreed that something is beautiful and something good, though as to what is beautiful or good there is room for dispute. In knowledge, however, certain truths are accepted "in practice" by all men, together with certain assumptions which, independently of experience and often in the face of experience, science is compelled to make. The progress of science has often been guided by beliefs of the greatest heuristic value, for which nevertheless there was no justification in the state of scientific knowledge at the time. Thus, in practice, we cannot help believing in the existence of an external world, and in the regularity of nature; and every step in the progress of science rests upon assumptions as yet unverified and perhaps incapable of verification. If anything is beautiful, if anything is good, if anything is true, we cannot account for its beauty, its goodness, or its truth by its origin. And by its origin Mr. Balfour means the description which psychology, anthropology, biology or physics may give of its history. And if science is unable to explain the existence of value and of truth, we must find for them an origin

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"congruous with their character." This origin theism alone (or the belief in a conscious purpose or design) can provide. For "value is lost if design be absent" (p. 44).

It is evident that whatever Mr. Balfour's modesty may protest, his argument suggests an æsthetics, an ethics, and a theory of knowledge. He attempts, it is true, to limit the scope of his inquiry by starting "from premises which are practically accepted by both parties to the controversy" (p. 25). But in general it may be questioned whether in any philosophical dispute such premises can be found. Nor does Mr. Balfour himself adhere very strictly to this procedure. In his discussion of art, for example, he admits that he is "not appealing to all men, but to those only, who when they explicitly face the problem, become deeply conscious of the incongruity between our feelings of beauty and a materialistic account of their origin." Upon this incongruity he bases his argument from æsthetics. If the incongruity be not only not obvious to many of those who explicitly face the problem, but obvious chiefly to those who have not faced the problem, is there in this part of the discussion any accepted premise left?

I fail to find any such premise, or any such incongruity, in art. We may agree with Mr. Balfour that our enjoyment of beauty is not independent of our world outlook (expressed or implicit), but we need not admit that æsthetic rapture is dependent upon any particular theory about the world. That the materialist and the theist will enjoy art in very different ways is quite probable; that they interpret this experience differently is certain. That the experience and its interpretation are not completely distinguishable may be admitted. In a sense, indeed, art is dependent upon world outlook; in the sense, namely, that our interest in art cannot be isolated from the other interests of life, among them interests of philosophy and religion. But to say that any one type of philosophy is hostile to art or to morals is manifestly unfair; it is truer to say that the type of mind which leans toward one type of philosophy will manifest its peculiarity in its tastes in art, and its tastes in morality, as well. But no philosophy can force us not to feel or value at all. A distorted puritanism, indeed, is as fatal to values in art, an orgiastic mysticism as fatal to values in morals, as any materialism can be. If Mr. Balfour is matching a popular materialism against an enlightened theism, it is not a fair fight; if he matches a popular

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materialism against a popular theism, the struggle is of no interest; and if a philosophic materialism against a philosophic theism, then the evidence fails to show any advantage to one side more than the other.

In other words, Mr. Balfour seems to confuse the issue. It lies not between a theory (naturalistic) and a value, but between two theories about a value. So far as we can distinguish the enjoyment of art from our theory about it, there is no reason why the Naturalist and the Theist should not be equally sensitive; when they value different things they will be valuing on grounds not purely æsthetic. When the claim is made that a theory robs art of all value, the statement means "robs it of a value which was never an *æsthetic* value"; *i.e.*, robs us of a belief which gives us pleasure, and to which we are really more attached than we are to art. If Mr. Balfour can show, indeed, that the naturalist is compelled to isolate art from all values of belief; if the naturalist is compelled to say: "the enjoyment of art means nothing but a particular stimulation of the nerves; it is unrelated to my interests and unaffected by my beliefs"; then, truly, æsthetic value is lost. But if æsthetic value and world outlook are both of "natural origin," they need not be isolated from each other. I see no reason why a man's enjoyment of art, or appreciation of history, should be atrophied by a naturalistic philosophy or stimulated by a theistic one. The naturalist can freely admit that his enjoyment of beauty is coloured by his peculiar philosophy; it may be none the less intense and discriminating. If the majority of lovers of art, as Mr. Balfour claims, have not been materialists, this is partly because the majority of lovers of art have held no explicit philosophic theory. And if the case lies between articulate creeds, not popular catchwords, ought not Mr. Balfour to take a census, among his philosophic acquaintance, to discover whether the theologians manifest, on the whole, a truer taste and keener appreciation than his friends of naturalistic tendencies?

The whole issue, in Mr. Balfour's discussion of æsthetics and ethics, seems to owe its origin to a confusion between æsthetic and ethical values (*i.e.*, feelings) and the values of the beliefs about these feelings. Admitted that the emotional experience and our beliefs about it are inseparable; that our feelings toward a painting are largely dependent upon our knowledge and our beliefs about the world; or even that our dimmest consciousness

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of enjoying a work of art and our effort to understand this enjoyment is an inchoate æsthetic; nevertheless the feeling and the belief are different things in different categories of value. We enjoy the feeling, and we cannot rest content unless we can justify it by exhibiting its relation to the other parts of our life. Having made this attempt, we then enjoy the theory we have made.

For Mr. Balfour, the belief is the important thing. He is not content with beauty, nor can it be for him beauty, unless it is ultimately (and not, as every one might concede, in a certain sense) a "revelation from spirit to spirit." He is not content with "the highest loyalties, the most devoted love, the most limitless self-abnegation" if he is forced to acknowledge that they are the "useless excesses of a world-system." If anyone values these qualities so lightly that an argument can disturb his love for them, there is nothing to be said. But at least he may be charged with a misunderstanding of the attitude of naturalism toward value.

To explain history, natural or human, by "natural selection," and to estimate æsthetics or morals by "survival value" would obviously not destroy all value, although, in substituting some values for others, it might destroy those we prize most highly. On the other hand, the morality of "loyalty, love, and self-abnegation" which we prize cannot afford to disregard the ethics of survival; for, if we are to defend any morality which seems to make for the destruction of the species or not to further its survival, we can do so only on the ground that we find it good in itself, *i.e.*, that we like it, certainly not with a view to some divine event in which there will be no species to participate. Mr. Balfour's ethics are a sort of Tennysonian naturalism. If we find the explanation of history in a divine purpose, as yet but partially fulfilled, then we may feel sure that the best will survive; and between saying this, and saying that what survives is best, there is in practice very little to choose.

The fact is, no philosophy can render morality either more or less secure than we actually find it to be. A philosophy may advance one or another hypothesis as to the origin of values, it may attempt to show that the majority of mankind are mistaken in what they value. All it can do is to propose an impartial explanation, or to substitute one set of values for another; but show that nothing is valuable it cannot. The only way to make a value negligible is to point to something of greater value; the

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only way to make it more valuable is to value it more—not to search for something of higher value to which it points. Therefore Mr. Balfour's attempt may even belittle rather than enhance æsthetic and moral value. To many people, I know, the moral law will seem worthier of "reverential obedience" if conceived as the injunction of Jehovah. To others, it may seem worthy of at least equal reverence if it lead to a state of affairs which we should value more than our present condition—whatever be its ultimate origin and meaning. To still others, it may seem worthy of reverence for its own sake: *i.e.*, because they like it.

Finally, the thoroughgoing naturalist would hardly venture to say that value has any origin or cause. In strictness, no reason can be given why anything should be valued, except an appeal to another, accepted, value. Our actions, perhaps, may be conceived as the "product of non-moral agents," but their morality may not. Our art may be the result of "material agents." Our emotions may be reducible to subject-matter for physiology. But physiology gives no cause for emotions—it gives causes for operations, upon which, for us, emotions supervene. Consciousness, for the naturalist, is an epiphenomenon and not in Mr. Balfour's sense an effect. We do not say that appetite in the animal is the cause of love in man. We do not say that morality is due to chance; chance in so wide a sense means nothing; we do not call it an accident, unless we know of some world, exactly similar to our own in every other respect, in which moral value is wanting.

The latter part of Mr. Balfour's book, that which deals with the origin of truth, is by no means the least interesting, although we have less space to devote to it. But the objections to be raised are fundamentally the same. Certain beliefs, the author asserts, are necessary assumptions. If they are the product of mechanical forces, our foundation for belief is destroyed. We cannot get on without them. Evolution cannot explain their truth. If they are true (and for their truth there is a strong "intuitive probability"), some other origin for them must be found. Something must direct our belief, and this something must be of the nature of a divine power.

Mr. Balfour's view of the relation of true belief to truth is open to the same criticism as his account of the relation of value to belief about value. So far as anything is true, our apprehension of the truth can surely have no cause other than the truth itself,

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and no science can claim, as the author makes science claim, that "all premises, all conclusions, and all the logical links by which they are connected must be regarded as natural products" (p. 255).

When a statement is false we look for causes of error. But a creature incapable of truth could be incapable of error as well. Even if we are such creatures—the products of material agents—our "truth" is not invalidated by the fact that we have no standards by which to criticise it. If a belief is inevitable, we can hardly hope to find a cause. That we should be unable to account for such beliefs is indeed natural, if we are "products of material agents," for it is natural that the product of a mechanical process should not understand the process. Nevertheless, though the beliefs be inevitable, it may be equally inevitable to believe that to a fuller intelligence they might be known to be of natural origin.

As a matter of fact, we cannot afford to pass uncriticised any of the beliefs which, Mr. Balfour says, have that "highest degree of probability" which is "inevitability." He instances the belief in an external world. But is this belief actually held by any but philosophers? The truth of such a belief is limited by the meaning which the terms have in practice. The existence of an external world hardly seems to be a "probability" at all; it is either something which only a madman would doubt, or something which only a philosopher would assert. Do we know in the first place what we *mean* by an "external world?"

At all events, Mr. Balfour's position is a tenable one, and every tenable position ought for the sake of the philosophic spirit to be maintained. The book is unsatisfactory, not because he fails to make his own case persuasive, but because he fails to make his attack convincing. If we formulate the claims of naturalism as Mr. Balfour does, we grant that he has demolished a very unsubstantial fabric; and this formulation, it is to be anticipated, the majority of Mr. Balfour's readers will accept.

T. Stearns Eliot.

London, England.

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THE GREAT PROBLEMS. By Bernardino Varisco. Translated from the Italian by R. C. Lodge, M.A. London: George Allen & Unwin, 1914. *Library of Philosophy Series.* Pp. viii, 370.

KNOW THYSELF. By Bernardino Varisco. Translated by G. Salvadori, Ph.D. London: George Allen & Unwin, 1915. *Library of Philosophy Series.* Pp. xxix, 327.

In these two volumes, English readers of philosophy are introduced to Varisco for the first time in their own tongue. Those who know him only by repute—he is described by Ueberweg and Heinze as one of the most active speculative minds of our time—will welcome the addition thus made to the "Library of Philosophy." The two books do not differ materially. Each presents, in a somewhat different form from the other, the same philosophical system, deliberately expounded for the most part without quotations from other thinkers or historical references, complete in general outline if not in detail, positive as regards its method, and furnished with profuse if not always illuminating illustration. In its general character the system and method is an example of the classical tradition in philosophy, of the belief that speculation can yield complete truth about the nature of the universe. In his search for such truth, Varisco attempts to eliminate every assumption, and in one of his confidential appendices tells us that he believes he has accomplished this task.

In *The Great Problems* are discussed in succession various traditional philosophical problems, such as sense-perception, cognition, being. The *great* problems, however, are primarily practical, not theoretical. Has the world intrinsic value? Does nature tend towards an end? Does personality survive the body? Is there, in or above things, a principle of wisdom and goodness which governs them? And the greatest of the great problems is constituted by the alternatives of Theism and Pantheism, for upon the answer to this question, it is maintained, depend the answers to the others. A general philosophical theory is required if the great problems are to be solved.

Philosophy, for Varisco, is a theory of the possibility of cognition. He endeavours to elaborate such a theory by making it as nearly as possible a simple statement of facts. His treatment of sense-perception is fundamental for his doctrine. Basing his reasoning upon the principle that nothing is to be assumed, he is led to a Phenomenalism, in which the knowing, feeling, and acting Subject is at once a relatively spontaneous centre and a *unity*

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or *form* of phenomena. It is interesting to find such a theory emanating from Italy, similar as it obviously is, in certain respects, to certain recent developments in thought both in England and America. There are great differences, however, between the phenomenalism of Varisco and that of William James or Mr. Bertrand Russell. There is nevertheless in all these thinkers an interesting similarity in the treatment of data of sense.

Varisco's theory of the Subject is, however, unique, and perhaps his most valuable contribution to thought. He notices that potentially a Subject *may* know all phenomena. Therefore, it must not be defined as the form or unity of such phenomena as *are* known to it. For if this be done, Varisco believes that no explanation can be given of the fact that phenomena can *become* known. What is required is a conception of the Subject which will explain this fact. Consequently, the Subject is conceived as a unity of *all* phenomena, although at any moment all phenomena, so far as any Subject is concerned, fall into three classes, namely, phenomena which are conscious, phenomena which are subconscious, and phenomena which are unconscious. But *form* apart from *matter* is nothing at all. Consequently, the Subject is not merely the form of phenomena, but also the phenomena themselves; more completely, the Subject is all phenomena in an organized form. It is maintained, for example, that when a Subject is aware of a patch of red, that patch of red is a *constituent* of that Subject (and possibly of others also). Something further is still needed, however. Development must be explained. Consequently, the Subject is conceived as a centre of relative spontaneity. The doctrine thus briefly adumbrated explains the name of the second of the present volumes (*Know Thyself*), for if it is true, in knowing oneself one knows all things.

Ethical results follow at once. The first values are found in a satisfaction and dissatisfaction which come as effects of free or obstructed activity. Satisfaction results from free activity, it is maintained, because such activity constitutes a development of the Subject's implicit content, and is therefore good, while obstructed activity prevents such development, and is therefore bad. Considerable emphasis is placed by Varisco on activity as source of value, and his ethical position is in consequence a kind of qualified pragmatism. From the conception that self-development is the good, combined with the theory that the Subject is

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the unity of all phenomena, it follows easily that the ethical end is continual self-development.

But is such development possible? Will not death prevent it? In the appendices to *Know Thyself*, Varisco discusses in what sense the problem of immortality is valid as a problem. Consonantly with his phenomenalism, he maintains that the problem in one form, namely, that in which the Subject is conceived as a substance, is fictitious. The real problem, he says, is whether the particular *unity of phenomena* we call a conscious Subject will survive death; for the conception of immortality does not fall with the conception of substantiality. But this question, like the supreme question of all, that which asks, "Theism or Pantheism?" is left unsolved by Varisco. The obstruction in the way of a solution is believed to be but temporary, and the author decides for himself, though for no *reasons* at all, in favour of Theism.

The present works exhibit throughout a high moral enthusiasm. The author's style is terse and unadorned. The expression of his thought is vigorous, although there is in general a far higher proportion of confident statement than of argument. He is obviously interested above all things in the destiny of man.

BERNARD MUSCIO.

Cambridge, England.

POLITICAL IDEALS; THEIR NATURE AND DEVELOPMENT. By C. Delisle Burns. Oxford University Press, Humphrey Milford, 1915. Pp. 311.

This is an unusually well-planned, well-written and interesting book. Its thesis is "that modern politics is governed by the conceptions men have of a state of things which would be better than the present." By this Mr. Burns seems to mean very much what Mr. A. V. Dicey meant in his *Law and Public Opinion*, with this difference—that while Mr. Dicey showed in detail with what sensitive closeness the development of English law and institutions followed the current of public opinion in a single century, Mr. Burns aims at showing the same thing happening as it were in bulk. He holds that all through history the main factors determining the nature of political institutions have been these conceptions, which he calls political ideals and which Mr.

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Dicey would call public opinion, and he accordingly sets himself to trace in bold outlines the history of this causal relation.

Beginning with ancient Athens, and confining himself to those great movements of opinion which embody ideals still alive today, he unfolds his story roughly as follows. In Athens was born the ideal of liberty—for the group self-government, for the individual "freedom of mind from the trivial cares of food and clothing," so that each man, while subject to the reign of law, was free to lead the "good life," with the results in art, science, and speculation that we know. In spite of the narrowness of the Greek conception, which excluded slaves and women, the Athenian experiment in democratic government, "fatal as it was to themselves," left this legacy to the world—the conviction that each man ought to have free development, and that each ought to concern himself with the business of the State. Rome's contribution, on the other hand, was order, the complement of liberty, but Rome broke up because her order, in whose shadow the barbarians had grown strong, turned to tyranny. Then, with Christianity and Stoicism, the slaves and barbarians came, sentimentally at least, into their own; the conception of cosmopolitan equality took root, not indeed as a political program but as a sentiment, and was to some extent carried on in that fantastic embodiment of the medieval ideal of unity, the Holy Roman Empire. In the middle ages modern Europeans felt themselves to be of one family; the ecclesiastical system and the mediæval criteria of social rank had a cosmopolitan validity; and this ideal of European unity is still effective in two forms, one good and one bad—the concert of Europe, and the German theory of Teutonic domination. With the Renaissance, under pressure of the need to substitute strong government for local anarchies, European unity faded before the ideal of the sovereign state, an ideal bearing in its bosom the seed of modern nationalism, and itself half good and half bad; good in so far as it allowed different communities to develop independently, and bad because it involved opposition between groups, dynastic wars, and the barren struggle for the balance of power. The French Revolution redressed the balance by proclaiming those rights of the individual which the Renaissance theory of sovereignty had affronted; and with the revolutionary ideal of the political equality and freedom of all adults, we have come round once more to something like the old Greek conception of freedom,

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only translated into modern terms. Mr. Burns next discusses two antagonisms, as they are commonly conceived, between ideals which are very powerful in the modern world. There is the clash between Nationalism and Imperialism; Nationalism so valuable to humanity for the preservation of the richness of diverse types, for its fostering of characteristic laws and institutions, and so pernicious with its jingoism and its narrow political outlook; and Imperialism, which, while apt to degenerate into stupid belief in the virtue of material force, has the merit of extending single systems of law and government over many different lands and races. Finally, there is the seeming conflict between Individualism and Socialism, both ministering to a want of the soul and both aiming by different means at the same end—free opportunity for full development of every member of the group.

There is much to be said for Mr. Burns' view that the history of ideals is the only kind of history worth writing. But, as his purpose is not mainly historical, I shall not discuss that point. His purpose is mainly ethical; he is concerned, he says, only with "the ethical standard which embodies itself in a political ideal," and if his method is historical, that is only because, unless we understand how our ideals are inherited from the past, we can not value them properly. And in fact the most valuable feature of Mr. Burns' book is the soundness of his ethical judgments; he sees all round our ideals, he is never led astray by claptrap. He is enthusiastic for what is good in them, yet at each stage of his historical review he balances the pros and cons with the disinterestedness of a Sidgwick. But there seems to be some confusion as to the function of historical criticism in producing this attitude. The study of history may cool our approval of Imperialism or our condemnation of Renaissance sovereignty, because it tells us that the pursuit of certain goods in a certain way has actually been attended by certain evils; but it can hardly throw light on the goodness or badness of any particular ideal in itself. If Mr. Burns merely means that history helps us to judge justly by instilling that disillusionment which is the most powerful antidote to the transient passions of the moment, he is no doubt right. But he often speaks as if he meant more than that,—as if, for instance, the knowledge that liberty was invented at Athens were relevant to the question how far liberty is desirable.

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Turning to details, the reader will find, among much that is sound, some questionable matter; that is inevitable, for no one can cover so vast a field without exciting some objection, and where so many moral judgments are passed it is unlikely that all should be convincing. One striking weakness is the treatment of the relation between mediæval and modern ideals. Too high a value seems to be assigned to the mediæval conception of European civilization as a unity, and to its survival in our own day; here those who think that Hindus and Chinese are as civilized as ourselves will not be in sympathy with Mr. Burns. On the other hand, status, that fundamental presupposition of mediæval society, is hardly touched upon, and its value is underestimated. The notion that a man's income and opportunities, his rights and duties, are automatically fixed for him at birth, instead of depending on his merit or earning-power, has its good side, which, as Mr. Burns does not notice, has unconsciously become part of the ideal of socialism.

At the same time it would be hard to name any recent book that combines so keen a sense for history with such philosophical breadth and impartiality. It may be objected that Mr. Burns has produced a hybrid thing, neither philosophy nor history. But the fact remains that he has an advantage over most historians in maintaining a serene and lofty detachment of tone which is very impressive, and an advantage over most philosophers in that his plan enables him to sprinkle his work with acute and well-considered reflections on topics of living interest to all intelligent citizens.

SYDNEY WATERLOW.

London, England.

POLITICS AND CROWD MORALITY: A STUDY IN THE PHILOSOPHY OF POLITICS. By Arthur Christensen. Translated from the Danish by A. Cecil Curtis. London: Williams & Norgate, 1915. Pp. 270.

The Analysis of the mental and emotional life of crowds is interesting, but the author underrates a characteristic of crowds which no advocate of any movement of reform can have missed, though it is probably more marked in scattered than in local crowds: namely, their apathy, and inaccessibility to new concep-

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tions. This apathy, quite as much as excessive emotional suggestibility, is the foe of any enlightened self-interest, and contributes to sustain vested interests whose power will only yield to much more drastic measures than the reorganisation of the franchise according to trade and occupation. Mr. Christensen passes on to an attack on the whole system of Parliamentary government, with special reference to Continental Europe. And here he lapses from his ideal of "alert criticism and healthy scepticism versus dogmas and illusions"; such a statement as the following: "Democracy became for the nineteenth century what the Church of Rome had been for the Middle Ages, a sacred infallible institution" is grotesquely inaccurate; and of what period of the nineteenth century can it be said that "whatever stood in the way of Democracy was swept away"? The scenes in the Austrian Senate and the Hungarian Chamber of Deputies, which he cites as examples of Democratic degeneration, are the natural results of the race-hate engendered by the oppression of subject races by Teuton and Magyar, and of the exploitation of all other classes by the landed proprietors, the so-called Agrarians. They are no more the necessary result of Democracy as such than the opportunism and absurd formalism of many debates in the English House of Commons. The participation of the entire people in the life and government of the State is only possible when both education,—as distinct from a scrambling technical instruction or the repetition of dates and platitudes—and free access to the means of livelihood, are the lot of *all*. Land and industrial private monopolies have so far succeeded in sidetracking and frustrating Democracy, both directly and indirectly; *cf.* the public ballot as an instrument of terrorism in Prussia, and the corruption of the newspaper press in Western Europe and America, by the big advertisers.

Mr. Christensen admits that "Whatever is detrimental in the inner life of the State, will be certain to prove detrimental also in the mutual relations of States"; and his sketch of foreign and international relations is very much more just and acute than his indictment of Parliamentary government. He exposes the brutalities of the big economic interests to Oriental and small barbaric states; he reminds us of the massacres at Blagovyeshchensk, and the Japanese treatment of Formosa and Corea, the humbug of the "open door" in Persia, Manchuria and Morocco, and the exploitation of the Indians in Oklahoma; and he makes

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a criticism of profound interest on the subject of "diplomatic pacifism," evidently written before the outbreak of the war—though the book was translated by February 1915. After tracing the history of the Hague Conferences of 1899 and 1907, and the smaller London Peace Conference in 1908, he plainly indicates the danger of "a monopolist Great Power Trust for the trampling down and impoverishment of all other state and national life"; and declares that "war is preferable to the prospect of a hopeless stifling of all values outside the trust-magnate interests of a coalition of great powers." He sees the dawn of an international social sense in the various ententes which rouse real popular enthusiasm and form a connecting link between the crass "political" crowd morality and the higher ethics observed by most individuals.

Mr. Christensen's remedy for "crowd-morality" in domestic and foreign affairs, is primarily education—the slow permeation of knowledge and ideas of truth and friendliness—and secondarily, professional or trade representation: for he by no means throws over the representative principle. He quotes the suggestion of Adolphe Prius that men shall vote according to their occupation and that each association be allotted "a number of deputies which correspond to the social, not the numerical significance of that association," but he does not give any adequate consideration to either the advantages or the drawbacks of the scheme. His belief that a "corporation"—an association founded on intellectual or material interests—is "rational and critical" is supplemented by a hankering after an "Upper Chamber" corresponding to the territorial or historical divisions. And what of the most numerically powerful of all economic interests though so far the least studied and the least represented: the consumers' interest? No doubt the territorial distribution of seats in the modern industrialised state is an anachronism. But Mr. Christensen's criticisms have the *unreality* which must accompany schemes of political reform that accept the present systems of production and exchange.

F. W. Stella Browne.

London.

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MORALS IN EVOLUTION. By L. T. Hobhouse, D.Litt., Martin White Professor of Sociology in the University of London. Third Edition. London: Chapman & Hall, 1915. Pp. xvi, 648.

Morals in Evolution is so well-known, and the place it occupies in ethical literature is so secure, that it is unnecessary to say anything now on its general scope and merits. But as, for this edition, the book has been to some extent rewritten, it will be useful to draw attention to the chief points at which alterations have been made or additional matter introduced. The changes in this edition are fairly numerous; but, when one remembers that the years that have passed since the book first appeared have made very considerable additions to our knowledge of the anthropological matter on which it is largely based, and that Professor Hobhouse has himself been engaged during that time both in rethinking the philosophical conceptions embodied in the work, and also, in conjunction with other specialist workers, in collecting materials on one or two of the special fields covered by it, the remarkable thing is that he has found it necessary to make so few changes. That is a testimony to the substantial excellence of the work. The alterations that have been made are of two main kinds.

In the first place, Professor Hobhouse has enriched the book with many new footnotes containing references to recent anthropological work. Some of these notes are very elaborate, for instance that in which he mentions, with references, the various beliefs in a future life held by about one hundred different tribes.

The other main kind of change is more philosophical, and is thus, of course, of greater significance for Professor Hobhouse's general argument. It may be said at once that the revision has greatly enhanced the philosophical value of the work. Readers of the first edition felt sometimes that they were overwhelmed in detail, and that it was difficult to discern the principles which in the author's mind organized the masses of raw fact. In this edition Professor Hobhouse has succeeded in making very clear the main principles of development, and the criteria by which to judge of ethical progress.

A comparison of this edition with the original indicates the important philosophical advance that has been made. In the original edition, Professor Hobhouse simply assumed the terms

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"higher" and "lower," though he pointed out that this procedure was unsatisfactory, for it virtually assumed what it was the object of the study to investigate. At that time, Professor Hobhouse had no means of classifying stages of development, except vaguely in terms of higher and lower general culture. In the new edition, a great advance is made. He no longer assumes as the criterion of ethical progress a factor (general culture) which itself includes ethical development. He now takes as his standard intellectual development, on the ground that that is the most prominent and measurable characteristic in human evolution. In using the terms "higher" and "lower," he now makes no assumption; civilisations are now called higher or lower according to the degree of their intellectual equipment of knowledge and method, and their control, by means of that equipment, of the material conditions of life.

In intellectual and moral development respectively we have what are given as two independent variables. The values of the intellectual variable are roughly known to follow a certain law, and it is one of the tasks of the book to investigate the relation of the moral variable (whose values are unknown) to the intellectual variable (whose values are roughly known); and thus to seek to determine the laws of moral development. I have stated Professor Hobhouse's problem and method in mathematical terms because this way of putting it seems to me to show clearly the thoroughly scientific character of his method. The results of the application of the method will naturally depend, in part, on the accuracy with which the intellectual factor has been evaluated. Professor Hobhouse takes as the measure of intellectual development the classification of peoples as hunting, pastoral and agricultural, which he has recently explained in *The Material Culture and Social Institutions of the Simpler Peoples*. Using this as a criterion he correlates with it the moral practices of the various tribes; and finds, on the whole, that moral progress seems to be roughly proportional to intellectual advance.

The other changes in this edition are, for the most part, in the direction of making clearer the philosophical principles involved in the various lines of moral development. Thus, on pp. 88 ff., the development of the administration of justice in primitive society has been freshly elucidated; on pp. 152 ff., there has been some reconstruction of the account of methods

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of arranging marriages; the chapter on property has been considerably expanded; and the account of the development of animism has been largely rewritten. In all these cases Professor Hobhouse has treated principles with a firmer and more confident touch than before.

And on the general question of the nature of ethics, Professor Hobhouse makes his view more definite than it was before. In the important reconstructed passages on p. 36, pp. 599 ff., and pp. 631 ff., he insists that the basis of ethics is a rational humanitarianism; and he draws a clear distinction between the tale of facts which form the history of ethical evolution, and the judgments of value with which ethical theory is concerned. The first point is important as indicating that Professor Hobhouse still holds, in distinction from Professor Westermarck and Dr. McDougall, that morality is not merely or primarily a matter of the emotions, but has an essentially rational foundation; and from the latter it is evident that Professor Hobhouse has no sympathy with those sociologists who look for an era in which the level of moral evaluation will be transcended.

G. A. JOHNSTON.

University of Glasgow, Scotland.

LIGHT FROM THE EAST. By Robert Cornell Armstrong. University of Toronto: Published by the Librarian, 1914.

For many years there has been a demand for a work containing a comprehensive summary of Japanese philosophy in a single volume.

Mr. Armstrong's Light from the East meets admirably the long-felt demand. The work, as stated in the preface, is "intended to throw light on some of the formative elements of Japanese civilization, and lead to a better understanding of Japanese character and life." The merit of the work chiefly lies in the comprehensive arrangement of carefully selected materials rather than in the author's originality of thought. His scholarly quality is also noticeable in his emphasis on the genetic explanation of the early Japanese thought. Like many other writers, however, he admits the difficulty of ascertaining the origin of the Japanese race and its religion which are intimately connected with the development of early Japanese thought. He compares

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for instance the two Japanese deities, Izanagi and Izanami, with the Chinese Yang and Ying, the two souls in the universe. In other words the author finds a striking similarity between the Chinese theory of dual souls and that of the Japanese dual gods. Here the author seems to have an advantage of being a foreigner who can look at the matters of this nature with less bias than the native writers who are usually prone to abandon native origin.

The main part of the book treats of the lives and works of the representative teachers and philosophers of Japan. It distinguishes clearly the different schools of Confucianism from the historical Confucianism. It explains how these Confucian scholars formed themselves into several groups, each representing a different school, and how each of them was influenced by Buddhism and Taoism under different circumstances. The three main schools of modern Confucianism are stated: one based on the teaching of Teishi philosophy, known as Shushi philosophy; one based on the teaching of Wang-Yang-Ming of China, known in Japan as Yomei school of philosophy; the third, known as the classical school, which is an independent reaction toward the original teaching of the sage.

The introductory and concluding chapters are very valuable and suggestive. In the first five chapters the author points out how the simple form of Confucianism as it first came to Japan was different from the complex philosophical form of the later Confucian schools. He makes clear that there was the change from a series of moral aphorisms to a complex metaphysical system. The stages in the development of Confucianism, as outlined by the author, are: (1) the union of Taoism and Confucianism; (2) the introduction of Buddhism; (3) the introduction of Zen learning; (4) the reaction from these teachings to the more practical morality of Confucius. "During several of these stages," says the author, "Confucianism was almost lost sight of; but its simple practical moral teaching contained too much truth to be permanently crushed by the extreme supermundane doctrines of any of other sects. The result was that Confucianism came out of the process enriched and systematized by ages of conflict."

The author's judgment of Confucianism either as a moral code or as a system of philosophy deserves our attention. Here he, like many other Western observers, probably out of his

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settled conviction that the Western thought is superior to that of the Orient, seems to underestimate the value of Confucianism not merely as a system of philosophy cherished by the intellectual class, but also as a great moral teaching, which has influenced consciously and unconsciously the Japanese mind, and which has been the potent factor in shaping Japanese life and character.

Dr. Ebina's essay, An Appreciation of Confucianism, in one of the concluding chapters, is very helpful in understanding the development of Confucianism in Japan and the extent to which it exerted its influence in Japanese civilization.

H. Okuda.

University of Chicago.

Divorce as It Might Be. By E. S. P. Haynes. Cambridge, England: Heffer & Sons.

Like all Mr. E. S. P. Haynes' work, these five essays combine a remarkable range of knowledge with a distinctly individual outlook and style. There is something eighteenth century about their closebrained brevity and precision, the graced felicity of the dedication to H. G. Wells, and the memorable irony of the first three pages and the telling passages on pp. 55–56 and p. 60. But no one who has followed Mr. Haynes' strenuous fight against stupidity and cruelty in their most jealously guarded preserves, needs to be told that the book is modern and vital in the highest degree. The two main essays, which appeared as articles in the *Fortnightly Review*, present a valuable analysis of the Report of the Divorce Law Commission (which endorses in nearly every particular Mr. Haynes' own suggestions less than six years before); and a bold, comprehensive, constructive defence of divorce by consent, subject to certain time limits and financial provisions. He does not anticipate any legal recognition of divorce by consent in England, for perhaps another century; and here it may be noted that though divorce by consent could be made perfectly compatible with due care for the children, and is the only solution tolerable to human dignity and freedom, yet, if it is not to involve great hardships and injustice to women, it should be postponed until motherhood is adequately protected by insurance or endowment, until all women have the knowledge of birth control and all young people a responsible and decent

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sex education. It may be that in the words of Mr. Walter Lippmann: The family has survived all manner of stupidity. It will survive the application of intelligence; but, as Mr. Haynes points out, the family is being subjected to immense strain by present conditions. Quite apart from feminism, an increasing number of men are finding the only legally recognized form of sex-relationship quite beyond their means; in Europe the shortage of young adult men after the war will be a further disintegrating factor. Yet in England the forces of apathy and reaction continue to oppose all attempts to alter laws which resemble nothing but a revoltingly indecent and cruel practical joke and are as indefensible from the standpoint of Catholicism as from that of rational humanity; just as they annually waste thousands of infant lives, and maunder over the declining birthrate. Probably any change for the better depends on a far greater amount of conscious "direct action," than English people at present contemplate. I believe the society of the future will recognize the extreme variety of emotional ideals and proclivities in human beings; and I hope Mr. Haynes will find time to expand the ideas presented in this book still further to turn his very vigorous, versatile, original mind and knowledge of books and men on the *whole* fabric of superstition's humbug and commercialized waste. His firm clear sense of vital values is much more characteristic of the French than the English mind!

F. W. Stella Browne.

The Elementary Forms of the Religious Life: A Study in Religious Sociology. By Émile Durkheim. Translated by J. W. Swain, M.A., London: George Allen & Unwin, 1915. Pp. xii, 456.

This important work, published in the original French edition some three years ago, is one of the most philosophically valuable of recent contributions to sociology. M. Durkheim insists on the necessity of philosophical reflection upon the *olla podrida* of bare facts with which anthropologists supply us; and regards sociology as not a merely historical and descriptive discipline, but an interpretative and critical science. This view of sociology naturally affects the method and results of the present work. In his investigation of primitive religion, M. Durkheim does not simply aim at satisfying the historical curiosity to know what

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actually are the cults and rites of elementary religions; he is concerned with the much more fundamental problem of the essential nature of religion in general, and he examines primitive religious beliefs and practices because he expects that they will throw light on the *meaning* of religion for life, and on the constitution of society as a whole. In following this method M. Durkheim succeeds in avoiding what may be called the sociologist's fallacy: he does not assume that the expression that is given to religious beliefs in a primitive society is necessarily a true expression, nor does he believe that if it can be shown that a particular elementary manifestation is false *all* religion must necessarily be an illusion.

As the most elementary form of religion, M. Durkheim takes totemism; and in the body of his work he examines first the beliefs involved in the totemic systems, and then the ritual practices connected with them. From the imposing array of facts marshalled in this book he concludes not only that religion is essentially social in character, but also that it forms the ultimate source of all man's intellectual and moral acquisitions. M. Durkheim believes that there is something really objective in religion, and that, though the actual forms in which these objective values are clothed in particular cults may be erroneous and illusory, yet behind them there *is* a real system of spiritual values. He leaves the conception of values rather vague, but he insists that though they suffer transformation they are neither epiphenomenal nor supererogatory. They are not identical with reality, but they express an essential and pervasive aspect of it. Further, religious values are, as ideals, necessarily social in character, for society and religion are essentially related. On this point M. Durkheim's argument sometimes comes perilously near a *circulus in probando*. He seems to want to prove that religion is based on society, and then that society is based on religion. The argument is not really, of course, so crudely self-contradictory as that; and it would be better to say that he interprets society by religion, and religion by society. But whether M. Durkheim's conclusions are sound or not, it is his great merit that he has not been content simply to collect facts, but has tried to interpret them and use his results as a key to unlock the heart of religion in general. The translation, unfortunately, has not been well done.

G. A. JOHNSTON.

University of Glasgow, Scotland.

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SHORTER NOTICES.

TRADE MORALS, THEIR ORIGIN, GROWTH, AND PROMISE. By Edward Page. New Haven: Yale University Press; London: Humphrey Milford, Oxford University Press, 1914. Pp. xv, 287. $1.50.

This sixth volume in the valuable Page Lecture Series is by the founder of the Series. Its central conception is that of the group with its Folk-Customs (the *mores* of Sumner). Out of established folkways the group select as folk-customs those which it deems essential to its group welfare and enforces them. These are largely disregardful of the individual. But compassion, arising from parental instinct, leads to consideration of the individual and thus to distinct morals. Morals derived from the customs engendered by pity flow from the individual to the group, while those derived from folk-custom flow from the group to the individual. These compassion habits may be called Humanistics and when adopted by a group or sub-group, such as family or class, get moral value. Business morals are in essence customs of industrial or other economic groups, which often conflict with the universal morals derived from folk-custom and which are recognized by society as binding upon all of its members. Sometimes as in the question of payment of personal taxes, humanistic impulses for equal treatment conflict with the law which requires double taxation of certain property, and folk-custom of evasion becomes a compromise. Chapters on Moral Conditions of Success, and Competition Contract offer many suggestive comments on concrete problems. Certain details, *e.g.*, the attribution of the humanistic factor to the parental instinct and compassion motive exclusively may be criticized, but the thoroughgoing application of the group conception makes the treatment as a whole clear and instructive.

J. H. T.

ETHICS IN SERVICE. By William Howard Taft. Page Lecture Series for 1914. New Haven: Yale University Press; London: Humphrey Milford, Oxford University Press, 1915. Pp. 101. Price, $1.00.

The first of the five lectures in this little book is upon History of the Profession of Law and calls attention to earlier periods of unpopularity of the lawyer both in England and the Colonies. The second lecture on Legal Ethics discusses especially the ethics of advocacy and points out some of the principles involved in reconciling the duty of the attorney to his client with his duty to the court. The present system is defended as affording on the whole the best method of bringing out all relevant facts and arguments. The third lecture is on the Executive Power. In the fourth and fifth, on The Signs of the Times, the initiative, referendum and recall are opposed; various manifestations of an increased fraternal spirit are noted; the present attitude toward business success is characterized as an extreme development of a legitimate attack upon corruption; trades-unionism is endorsed in principle as "essential in the cause of labor," although several of its abuses are criticized. "We are going to have organized labor for all time and we ought to have it."

J. H. T.

THE CRY FOR JUSTICE: An Anthology of the Literature of Social Protest. Edited by Upton Sinclair, with an Introduction by Jack London. Pp. 891. Philadelphia: The John C. Winston Co., 1915.

If any one thinks of the under dog as on the whole a rather unpleasant, inartistic, and vulgar attendant of civilization whose crude utterances are

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scarcely entitled to be called literature, he will be disillusioned by this volume. From the tale of the Eloquent Peasant of ancient Egypt down through prophets of Israel, Greek poets, and church fathers, to the writers of the present, scarcely one of the world's greatest authors is unrepresented. Twenty-five languages are drawn upon, the selection has been remarkably catholic as to topics and points of view, but the aim has been to make the standards of the book "those of literature." Some of the topics under which the material is ordered are, Toil, The Chasm, Out of the Depths, The Outcast, Revolt, Martyrdom, Jesus, Mammon, War, Country, Children, Humor, Socialism, The New Day. It may seem discouraging to find how old the cry for justice is but for any lover of justice it cannot fail to bring inspiration to see in what company he may count himself. Just as an anthology of literature it is one of the best, and for many it will be as London calls it a humanist Holy Book. A number of illustrations reproduce famous statuary, paintings and cartoons.

J. H. T.

EVOLUTION OF LAW: Select Readings on the Origin and Development of Legal Institutions. Vol. II Compiled by Albert Kocourek and John H. Wigmore. Boston: Little, Brown & Co., 1915. Pp. xii, 704.

This is the second volume of a series of three of which the first is Sources of Ancient and Primitive Law. The series is for the general reader and student of institutions as well as for the lawyer and is one of the agencies now making for a more scientific jurisprudence and for broader and more liberal legal ideas. The readings are from many authors and are in part translated expressly for this volume. They are grouped under the general heads Introduction, Law and the State, Persons, Things, Procedure. Publications of this character are certain to exert a strong influence toward better mutual understanding on the part of lawyers on the one hand and students of institutions on the other, and teachers of ethics will find highly valuable material for the study of the evolution of morality. The scholarly authors deserve the gratitude not only of the members of their own profession but of all who are interested in the more intelligent conception and administration of justice.

J. H. T.

CURRENT ECONOMIC PROBLEMS. By Walton Hale Hamilton. Chicago: University of Chicago Press, 1915. Pp. xxxix, 789. Net, $2.75.

This is a source book of a very different sort from the Readings in the Evolution of Law noticed above. Instead of a relatively small number of scientific treatments of fundamental problems there are 382 selections ranging in authorship from classical economists, jurists, political scientists and philosophers to present day social workers, syndicalist and trade unionist leaders. Samples from a tariff bill, posters from Parliamentary campaigns, correspondence of the National Wool Growers Association, and comments by Mr. Dooley help to make up a collection of material very different from that which the student of economic and industrial problems has had before him in the past. The fact that the volume is intended to be used in connection with ordinary texts explains in part its presentation of material not found in these. But a larger purpose is evident, namely, that of introducing the student not so much to an isolated discipline of pure economic theory as to a study of the industrial and economic aspects of the world in which we are now living. Accordingly the selections deal with the antecedents of present conditions, with the

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industrial revolution, with social control, with population, social reform and legal institutions as well as with the more definitely economic topics. While worked out primarily for class use it is stimulating to any reader and can scarcely fail to enlarge his outlook upon moral as well as economic problems.

J. H. T.

THE NATURAL THEOLOGY OF EVOLUTION. By Rev. J. N. Shearman. Allen and Unwin Ltd., 1915. Pp. xiii, 288.

The author states that his intention is to show that the argument from design is strengthened, and not, as is usually supposed, refuted by the doctrine of evolution. He deals first with the common-sense view of the design argument, passes thence to certain pseudo-philosophical considerations, after which he devotes seven chapters to illustrations of biological adaptation such as he believes will prove the existence of a finite God. The essence of the book is the assumption that order implies a directing consciousness. It is assumed that the forces of nature cannot elaborate order. This assumption is never criticised adequately nor really doubted, and consequently, since it is not difficult to discover instances of apparent order in nature, it is not difficult to justify a natural theology. The author's conception of order, however, is extremely vague, and no account is taken of the views of modern logicians on the theory of order. These difficulties are increased by many of the illustrations which the book contains. For instance, the orderliness of the furniture in a room is supposed to imply a directing consciousness, and its disorderliness the absence of such a consciousness; whereas, as a matter of fact, disorderliness of the furniture in a room is usually due to a directing consciousness, namely, to the maid who cleans it. In general, the illustrations resolve into a sort of special pleading. Some curious ruses are adopted to evade difficulties, not the least interesting of which is the suggestion that instances of imperfect adaptation may be due to the ministrations of angels! As the whole book rests upon an uncriticised assumption, the best comment on it may be found in the author's own words, that "it is scarcely worth while to engage in any enquiry with a presupposition which determines the result" (p. 274).

BERNARD MUSCIO.

Cambridge, England.

THE HAPPINESS OF NATIONS: A Beginning in Political Engineering. By James MacKaye. New York: B. W. Huebsch, 1915. Pp. 256. Net, $1.25.

Taking for his fundamental concept Utility, the author attempts to work out more definite principles for political and social guidance than have hitherto been furnished by ethics. The way to convert human life into a source of happiness is declared to be "to eliminate as far as possible useless and harmful acts, and, in the second place, to increase the intensity and duration of positive consumption and pleasurable production, and decrease the intensity and duration of negative consumption and pleasureless production in the average member of society." Interesting applications of this come when we consider the relative values of consumption at very low levels, at very high levels, and at intermediate levels, *i.e.*, among the very poor, the very rich, or those between. Both extremes are declared to be condemned. Low consumption yields unhappiness, a high rate of consumption costs so much in labor that it does not pay.

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The distribution of leisure is another case for the application of political engineering. "As between a distribution of production and consumption such that A produces sixteen hours and B consumes sixteen hours, and one in which both A and B produce and consume eight hours apiece, the latter is more useful." One who does not accept utilitarianism as an adequate moral theory may yet find highly interesting and suggestive treatment of concrete problems. Certainly these definite problems of work and wages, production and consumption, challenge ethics to give us more definite guidance than it has yet offered.

J. H. T.

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An introductory lecture on the Symphony of Religions is followed by thirty chapters giving selections from the World's Religious Scriptures, Egyptian, Hindu, Buddhist, Zoroastrian, Confucian, Greek, Roman, Christian, Mohammedan. The whole compilation constitutes something quite different from the ordinary anthologies of "sayings," because the principle of selection is different. Mr. Martin's purpose has been to exhibit the unity in variety which characterizes the ethical thought of the great religions and to produce an impression of the worth of the whole body of their ethical doctrine.

G. F. O'DELL.

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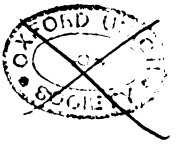

PROGRESS.

JOHN DEWEY.

SOME persons will see only irony in a discussion of progress at the present time. Never was pessimism easier. Others will recognize in it a fine exhibition of courage and faith, and find the manifestation heartening. There is indeed every cause for discouragement. But discouragement affords just the occasion for a more intelligent courage. If our optimism was too complacent, it is because it was too thoughtless, too sentimental. Never was there a time when it was more necessary to search for the conditions upon which progress depends, until we can reaffirm our faith in its possibility upon grounds better than those upon which we have too blindly relied.

If we have been living in a fools' paradise, in a dream of automatic uninterrupted progress, it is well to be awakened. If we have been putting our trust in false gods, it is a good thing to have our confidence shaken, even rudely. We may be moved to find truer gods. If the reeds upon which we relied have broken, it is well for us to have discovered their frailty. If we have been looking in the wrong direction, we now have a sufficiently strong stimulus to direct our attention elsewhere. We can hardly welcome the war merely because it has made us think, and has made us realize how many of the things we called thoughts were asylums for laziness. But since the war has come, we may

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welcome whatever revelations of our stupidity and carelessness it brings with it; and set about the institution of a more manly and more responsible faith in progress than that in which we have indulged in the past.

For there can be no blinking the fact that much of that faith was childish and irresponsible. We confused rapidity of change with advance, and we took certain gains in our own comfort and ease as signs that cosmic forces were working inevitably to improve the whole state of human affairs. Having reaped where we had not sown, our undisciplined imaginations installed in the heart of history forces which were to carry on progress whether or no, and whose advantages we were progressively to enjoy. It is easy to understand why our minds were taken captive by the spectacle of change, and why we should have confused progress with change. It is not necessary to rehearse an account of the barriers which for thousands of years kept human society static. Nor is it necessary to do more than allude to the various inventions which by facilitating migration and travel, communication and circulation of ideas and reciprocal criticism, and the production and distribution of goods in a world-wide market, have broken down those barriers. The release of energies has gone on for a century and a half to a degree which we are still impotent to realize. Persons and things have been endlessly redistributed and mingled. The fixed has given way to the mobile; the settled to the free. It was doubtless inevitable that, in its contrast with static conditions and ideals, this mobility and freedom should be taken for progress. Such it doubtless is in some respects. But the present crisis is in vain, so far as our intelligence is concerned, if it does not make us see that in the main this rapid change of conditions affords an *opportunity* for progress, but is not itself progress.

We have confused, I repeat, rapidity of change with progress. We have confused the breaking down of barriers by which advance is made possible with advance itself. Except with respect to the conservatives who have

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continuously bemoaned all change as destructive, these statements seem to me to sum up fairly well the intellectual history of the epoch that is closing. The economic situation, the problem of poverty by the side of great wealth, of ignorance and absence of a fair chance in life by the side of culture and unlimited opportunity, have, indeed, always served to remind us that after all we were dealing with an opportunity for progress rather than with an accomplished fact. It reminded us that the forces which were revolutionizing society might be turned in two ways: that they actually were employed for two diverse and opposed ends. But the display was not dramatic enough, not sensational enough, to force the lesson home. The war stages the lesson in a sufficiently striking way.

We had been told that the development of industry and commerce had brought about such an interdependence of peoples that war was henceforth out of the question—at least upon a vast scale. There are men now fighting who had written and lectured to that effect. But it is now clear that commerce also creates jealousies and rivalries and suspicions which are potent for war. We were told that nations could not long finance a war under modern conditions: economists had demonstrated that to the satisfaction of themselves and others. We see now that they had underrated both the production of wealth and the extent to which it could be mobilized for destructive purposes. We were told that the advance of science had made war practically impossible. We now know that science has not only rendered the enginery of war more deadly, but has also increased the powers of resistance and endurance when war comes. If all this does not demonstrate that the forces which have brought about complicated and extensive changes in the fabric of society do not of themselves generate progress I do not know what a demonstration would be. Has man subjugated physical nature only to release forces beyond his control?

Two things are apparent. First, progress depends not on the existence of social change but on the direction which

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human beings deliberately give that change. Secondly, ease of social change is a condition of progress. Side by side with the fact that the mere substitution of a dynamic or readily changing social structure for a static society does not accomplish progress, stands the fact that this substitution furnishes the opportunity for progress. We cannot too much insist upon the fact that until men got control of natural forces civilization was a local accident. It depended upon the ability of a small number of men to command, with assurance, the labor and services of other men. Any civilization based mainly upon ability to exploit the energies of men is precarious; it is at the mercy of internal revolt and external overflow. By exploring the heaps of rubbish scattered over the face of the earth, we are just beginning to learn how many civilizations have arisen in the past only to sink into rubbish heaps. The dominion of man over the labor of other men is a shaky basis for civilization. And civilization never attained stability upon such a basis. The scientific conquest of nature has at least given us another basis. We have now a sure method. Wholesale permanent decays of civilization are impossible. As long as there exists a group of men who understand the methods of physical science and are expert in their use, recovery, under the worst of circumstances, of the material basis of culture is sure and relatively speedy. While the modern man was deceived about the amount of progress he had made, and especially deceived about the automatic certainty of progress, he was right in thinking that for the first time in history mankind is in command of the possibility of progress. The rest is for us to say.

I might almost as well stop here. For it seems to me that about all which I can say about the future of progress at the present time is that it depends upon man to say whether he wants it or not. If we want it, we can have it—if we are willing to pay the price in effort, especially in effort of intelligence. The conditions are at hand. We do not of course wholly control the energies of nature;

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we shall never wholly do so. But we are in possession of a method which enables us to forecast desirable physical changes and to set about securing them. So much is the secure result of the scientific revolution of the last three hundred years. We also know that it is not possible to bring about these physical changes without effecting at the same time vast social changes. The men who invented the stationary and locomotive steam engine, and the men who have since then harnessed both steam and electricity to all sorts of ends, have produced social changes by the side of which those produced by Alexander, Cæsar and Napoleon are insignificant. And the same process is going on as long as applied science goes on, whatever we may think about its worth. But, I repeat, while social change, thus brought about, represents an indispensable condition of progress, it does not present a guarantee for progress. The latter depends upon deliberate human foresight and socially constructive work. Hence we have first of all to change our attitude. Instead of congratulating ourselves upon its presence and certainty as a gift of the gods, as we have been wont to do, we have to recognize that it is a human and intentional product—as much so in principle as a telephone or irrigation or a self-binding reaper, and as much more so in fact as the factors upon which it depends are more complex and more elusive.

The doctrine of evolution has been popularly used to give a kind of cosmic sanction to the notion of an automatic and wholesale progress in human affairs. Our part, the human part, was simply to enjoy the usufruct. Evolution inherited all the goods of Divine Providence and had the advantage of being in fashion. Even a great and devastating war is not too great a price to pay for an awakening from such an infantile and selfish dream. Progress is not automatic; it depends upon human intent and aim and upon acceptance of responsibility for its production. It is not a wholesale matter, but a retail job, to be contracted for and executed in sections. I doubt if the whole history of mankind shows any more vicious and demoralizing ethic than

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the recent widespread belief that each of us, as individuals and as classes, might safely and complacently devote ourselves to increasing our own possessions, material, intellectual, and artistic, because progress was inevitable anyhow.

In dwelling upon the need of conceiving progress as a responsibility and not as an endowment, I put primary emphasis upon responsibility for intelligence, for the power which foresees, plans and constructs in advance. We are so overweighted by nature with impulse, sentiment and emotion, that we are always tempted to rely unduly upon the efficacy of these things. Especially do we like to entrust our destiny to them when they go by eulogistic names —like altruism, kindliness, peaceful feelings. But spite of the dogma which measures progress by increase in these sentiments, there is no reason that I know of to suppose that the basic fund of these emotions has increased appreciably in thousands and thousands of years. Man is equipped with these feelings at birth as well as with emotions of fear, anger, emulation and resentment. What appears to be an increase in one set and a decrease in the other set is, in reality, a change in their social occasions and social channels. Civilized man has not a better endowment of ear and eye than savage man; but his social surroundings give him more important things to see and hear than the savage has, and he has the wit to devise instruments to reinforce his eye and ear—the telegraph and telephone, the microscope and telescope. But there is no reason for thinking that he has less natural aggressiveness or more natural altruism—or will ever have—than the barbarian. But he may live in social conditions that create a relatively greater demand for the display of kindliness and which turn his aggressive instincts into less destructive channels. There is at any time a sufficient amount of kindly impulses possessed by man to enable him to live in amicable peace with all his fellows; and there is at any time a sufficient equipment of bellicose impulses to keep him in trouble with his fellows. An intensification of the exhibition of one may accompany an intensification of the display of the

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other, the only difference being that social arrangements cause the kindly feelings to be displayed toward one set of fellows and the hostile impulses toward another set. Thus, as everybody knows, the hatred toward the foreigner characterizing peoples now at war is attended by an unusual manifestation of mutual affection and love within each warring group. So characteristic is this fact that that man was a good psychologist who said that he wished that this planet might get into war with another planet, as that was the only effective way he saw of developing a world-wide community of interest in this globe's population.

I am not saying this to intimate that all impulses are equally good or that no effective control of any of them is possible. My purpose is, in lesser part, to suggest the futility of trying to secure progress by immediate or direct appeal to even the best feelings in our makeup. In the main, there is an adequate fund of such feelings. What is lacking is adequate social stimulation for their exercise as compared with the social occasions which evoke less desirable emotions. In greater part, my purpose is to indicate that since the variable factor, the factor which may be altered indefinitely, is the social conditions which call out and direct the impulses and sentiments, the positive means of progress lie in the application of intelligence to the construction of proper social devices. Theoretically, it is possible to have social arrangements which will favor the friendly tendencies of human nature at the expense of the bellicose and predatory ones, and which will direct the latter into channels where they will do the least harm or even become means of good. Practically this is a matter of the persistent use of reflection in the study of social conditions and the devising of social contrivances.

I have already said that the indispensable preliminary condition of progress has been supplied by the conversion of scientific discoveries into inventions which turn physical energy, the energy of sun, coal and iron, to account. Neither the discoveries nor the inventions were the product

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of unconscious physical nature. They were the product of human devotion and application, of human desire, patience, ingenuity and mother wit. The problem which now confronts us, the problem of progress, is the same in kind, differing in subject-matter. It is a problem of discovering the needs and capacities of collective human nature as we find it aggregated in racial or national groups on the surface of the globe, and of inventing the social machinery which will set available powers operating for the satisfaction of those needs.

This is a large order. But it is not, with reasonable limits, one hopeless to undertake. It is much more within the bounds of legitimate imagination than would have been, five centuries ago, the subjugation of physical nature which has since been achieved. The chief difficulty lies in the primary step: it consists in getting a sufficiently large number of persons to believe in its desirability and practicability. In spite of its discipline by the achievements of physical science our imagination is cowardly and irresponsible. We do not believe that study, foresight and planning will do for the human relations of human beings what they have done for our relationship to physical nature.

We are living still under the dominion of a laissez-faire philosophy. I do *not* mean by this an individualistic as against a socialistic philosophy. I mean by it a philosophy which trusts the direction of human affairs to nature, or Providence, or evolution, or manifest destiny—that is to say, to accident—rather than to a contriving and constructive intelligence. To put our faith in the collective state instead of in individual activity is quite as laissez-faire a proceeding as to put it in the results of voluntary private enterprise. The only genuine opposite to a go-as-you-please let-alone philosophy is a philosophy which studies specific social needs and evils with a view to constructing the special social machinery for which they call.

So far I have avoided any contrast of the so-called progressive attitude with the so-called conservative atti-

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tude. I cannot maintain that reserve any longer. While in general, the opposite of the progressive attitude is not so much conservatism as it is disbelief in the possibility of constructive social engineering, the conservative mind is a large factor in propagating this disbelief. The hard and fast conservative is the man who cannot conceive that existing constitutions, institutions and social arrangements are mechanisms for achieving social results. To him, *they* are the results; they are final. If he could once cure himself of this illusion, he would be willing to admit that they grew up at haphazard and cross purposes, and mainly at periods quite unlike the present. Admitting this, he would be ready to conceive the possibility that they are as poor mechanisms for accomplishing needed social results as were the physical tools which preceded the mastery of nature by mind. He would then be free: Not freed just to get emotionally excited about something called progress in general, but to consider what improved social mechanisms or contrivances are demanded at the present day.

All this, you will say (and quite justly), is very general, very vague. Permit me, in concluding, to give a few illustrations suggested by the present international situation, which may make my conception a little less vague. A friend was in Japan at the time when the war broke out. He remarked to an acquaintance who happened to be the United States consul in the town where he was, that he supposed he would have no difficulty in getting an American draft cashed. His friend replied: On the contrary; he himself had had to spend almost two days in getting even a government draft cashed. My friend proceeded to generalize from this incident. He said in effect that in commerce we are proceeding upon an international basis; commerce depends upon a system of international credit. But politically we are doing business upon the basis of ideas that were formed before the rise of modern commerce —upon the basis of isolated national sovereignty. The deadlock due to this conflict could not continue, he sur-

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mised; either we must internationalize our antiquated political machinery or we must make our commerical ideas and practices conform to our political. Personally I agree with his account of the needed remedy; it makes little difference, however, for purposes of my illustration whether any one else agrees or not. The situation is one which is real; and it calls for some kind of constructive social planning. Our existing human intercourse requires some kind of a mechanism which it has not got. We may drift along till the evil gets intolerable, and then take some accidental way out, or we may plan in advance.

Another similar illustration is the condition in which neutral countries find themselves at the present time. They are in the position of the public when there is a strike on the part of street-railway employees. The corporation and the employees fight it out between themselves and the public suffers and has nothing to say. Now it ought to be clear that, as against contending nations, the nations not at war have the superior right in every case—not by any merit of theirs, usually only by accident. But nevertheless in the existing situation they are the representatives of the normal interests of mankind, and so are in the right against even the contending party that with respect to other contenders is most nearly in the right. But if the present situation makes anything clear, it is that there is almost a total lack of any machinery by which the factors which continue to represent civilization may make their claims effective. We are quite right in prizing such beggarly elements of international law as exist; but it is evidence of the conservative or laissez-faire mind that we cling so desperately to the established tradition and wait for new law to be struck out by the accident of clash and victory, instead of setting ourselves in deliberate consultation to institute the needed laws of the intercourse of nations.

The illustration may be made more specific. It was comparatively easy to unify the sentiment of the nation when previous international custom was violated by the sinking of the *Lusitania*. It would not be very difficult

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to inflame that sentiment, in the name of a combination of defence of national honor and defence of international custom, to the point of war. But it is always defence, mind you; every war is *ipso facto* defensive on the part of everybody nowadays. And defence is always retrospective and conservative, even when most offensive. A proposition to call for a conference of nations which would formulate what their rights are henceforth to be, whatever they may have been in the past, would be a constructive use of intelligence. But it would hardly call forth at present the enthusiastic acclaim of the populace and consequently makes no great appeal to the political authorities who are dependent upon the support of the populace.

One more illustration from the international situation. The relative failure of international socialism in the present crisis has been sufficiently noted, with grief by some, with ill-disguised glee by others. But the simple fact of the case is that at present workingmen have more to gain from their own national state in the way of legislative and administrative concessions than they have from some other state, or from any international organization. That they should make use of war to strengthen their claims for concessions from the only power which can make these concessions is but to be human. When the day dawns when the workingmen have more to gain in the way of justice from an international organization than from a purely national one, that day war will become an impossibility. But it is easier to try to do away with war by appeal to personal sentiment than it is to strive to institute even the first steps of any such organization—futile in comparison as the former method must prove.

I hope these remarks at least illustrate what is meant by the dependence of progress upon a foreseeing and contriving intelligence as well as what is meant by saying that it is a retail job. I can only point out the need, so far as they coincide in the further interests of peace with the interest of progress, of an international commerce com-

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mission; of an international tariff board; of an international board for colonies and one for the supervision of relations with those backward races which have not as yet been benevolently, or otherwise, assimilated by the economically advanced peoples. Such things are not counsels of perfection. They are practical possibilities as soon as it is genuinely recognized that the guarantee of progress lies in the perfecting of social mechanisms corresponding to specific needs.

JOHN DEWEY.

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THE FORMULAS FOR STATE ACTION.

ARTHUR K. ROGERS.

OF THE three formulas which in recent times have received the widest acceptance as an attempt to sum up the proper principles of state action, the earliest in point of popularity is, within the limits of its original intention, the simplest to define. This is because it represented primarily a negative rather than a positive demand. For the disposition, under the name of laissez-faire, to restrict the functions of government as far as possible, there were various reasons, of which it is sufficient to mention two. In the first place, its advocates were more interested in fighting abuses than in determining the positive conditions under which human nature could realize itself most adequately; and with their mind thus fixed on the dangers of state control as it had existed in the past, they were not much inclined to exalt its functions for the future. And in this disposition they were settled by their acceptance of the new political economy. The growth of industrialism demanded a sharp break with the traditional practice of the relationship between government and business; and the consequences were so immediate and striking that they dazzled the thinkers of the day. It seemed to them that they had hit upon an ultimate social law; generalized from the realm of industry, it became a theory of government in the large, based on an attitude of hostility to the traditional fussiness of a bureaucratic and paternalistic government, and a faith, going very considerably beyond the evidence then in, and in obvious contradiction to much that has since become available, that all the ills of a nation are met by the simple receipt of business prosperity.

The reaction came largely through the discovery that this is not the case, and that there are certain things which the state is practically forced to do that cannot easily be

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justified in a logical way under the principle of laissez-faire. It is not impossible, perhaps, by stretching, to bring such things as public education, and factory laws, under the formula, but they are opposed to its genius; they may possibly be harmonized with its verbal expression, but hardly with its animating spirit. The former is on its positive side extremely sketchy, and only nominally capable of a precise meaning. As an attempt to say what society shall do rather than what it shall not, the principle is thoroughly ambiguous. To declare that the state is justified in interfering only to protect its citizens from injury is obviously to give us no real information until we have defined wherein injury consists; interpreted loosely, it might cover anything from murder to a headache, or a feeling of æsthetic annoyance. In order to retain that definiteness which is its chief apparent merit, the laissez-faire formula must be kept very closely limited, and not be extended to cover also those more disputed cases which it was historically its intention to exclude; and this means that "injury" must be given a purely arbitrary definition. The entire distinctive meaning then comes back to a denial of the right of government to enter on the field of constructive measures, and its limitation to purely negative and preventive ones.

The most immediate occasion for the general adoption in recent days of the second formula—that of the general good, or the public welfare—is to be found in the protest against definite evils which were seen to be the consequence of the let-alone theory; but here also there is a lack of precision on the positive side. The main thought in the mind of the average upholder of the principle is a certain very indefinite content of positive good which, in opposition to the defender of laissez-faire, he considers that government ought to secure. He has before him the vague concept of an intelligent, moral, and happy community, where people are well behaved, and have at least enough to eat and wear, and which constitutes a modest Utopia to guide as an ideal our course of political action.

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Now of course no one can have the least objection to such an ideal. The advocate of laissez-faire would least of all reject the principle of the public welfare; what he claims is precisely that it is the general welfare that will best be served by leaving everybody, and especially men of business, with a free hand. This leaves, then, as the only unambiguous meaning to the second formula, the denial that the limits to advisable public action are to be found where the earlier theorists found them, through a reassertion of the positive ends of government. But the very fact that the reaction takes the form of an emphasis on the end of government, might well raise the doubt whether it has anything sufficient to say about the highly important question of the *limits* of government. It is clear that there are some things, at any rate, which are desirable, and which yet cannot be directly secured by collective action. Most well-to-do people, for example, would be better off if they ate considerably less, which might leave more also for the poor; but no one advocates a law regulating the number of courses at dinner.

But apart from the fact that the formula does not supply any real guidance in telling us where to stop, there are more positive objections that might be made to its sufficiency. If we consider the sort of problem we are accustomed to settle by reference to the common good, it will appear that they are such as involve the need of sacrificing personal independence and liking for the sake of securing co-operation; and that this necessity is most pronounced, not in the direct procuring of the positive goods of life, but in the negative process of warfare to overcome obstacles to such a consummation. War is indeed the typical case where the idea of the common good governs consciously our action. In itself war represents nothing that we desire. It is a crisis that has to be met before we can settle down again to the real business of living; and to meet the crisis we have temporarily to give up our autonomy, and subject ourselves to discipline. And the same thing holds under less abnormal circum-

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stances. It is not when I am engaged with others in a direct production of human values that I think of myself as working on principle for the general good. The carpenter who likes his work does not have to compel himself to join with other workmen in building a house by keeping in mind the greatest happiness of the greatest number. The larger good lies in the background as a condition of the satisfaction he gets in exercising his skill as an artisan; but it is not a substitute for his own natural preferences. But now conceive the same carpenter as member of a union. The union he does not feel as an end in itself, but as a weapon in class warfare. Under such an exigency he will often find himself led to acquiesce in things which go against his inclination—to strike, it may be, when he would much prefer to remain at work. And this is when he will naturally find himself emphasizing in his own mind, and when he may expect to hear from others, a phrase like the "good of the greatest number." The emphasis on the collective character of the end is the outcome not of a final value, but of method, and of method necessitated usually by the special circumstances of social conflict.

And this is a real objection to the formula of collectivism —that it tends, unless one is wary, to set up a wrong ideal of social life. Its logic points to the sinking of *men* in *organizations*. The emphasis on the welfare of the state is on existing *custom* nearly always. The individualistic emphasis, on the other hand, does not deny social claims, but it tends to give them a greater fluidity. It is not, fairly interpreted, a question of working solely for ourself: what it does involve is the substitution of a *cause* for the more limiting claims of an institution, a *principle* of good, applicable to all, each in his own way, rather than a *form* of good settled on some narrower basis. Of course to some extent subordination cannot be avoided; but as an ideal, it is possible to regard it as a perversion, to be justified only on the plea of an emergency. To bind myself to any organization is always to run the risk of giving up my own individuality, and so of losing the whole for the sake

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of a part. Nor is it in any degree certain that, outside matters of life and death, this is really good policy; it is for example what we have long been approving under the name of party loyalty, and now it turns out that we have given up independence only to find ourselves in the end failing of the benefits for which we sacrificed it. Of course I am not intending to deny to the "general welfare" any relevancy in political discussion. But it represents a means rather than an end, a condition and not a main motive. The "welfare" which is the real end and motive is always the welfare of individuals, who may, in so far as they are affected by any given piece of legislation, be few or many. What constitutes, in other words, the good that is to be extended to all, is to be settled otherwise than through its general character; and the motive which leads any man to work for it is primarily not its general character, but its individual appeal. What practically the notion represents is simply the recognition that when the content of individual good has been independently established, any political action which limits its possession to a part of mankind is thereby condemned. It has its main use, therefore, when democracy is engaged in combat with aristocracy. But for the problems of democracy itself it loses most of its practical relevancy. Here the main question is, What *constitutes* democratic good? and to this question it gives no answer. And by its emphasis it even runs the risk of suggesting a wrong answer, through the encouragement of a tendency to swallow up the individual in the mass which is democracy's great danger. In its verbal statement, there is nothing whatever to guarantee that in its notion of the good it will make any adequate allowance for that competing ideal of human liberty which, with whatever limitations, it is the merit of the laissez-faire theory to have kept in the foreground. Is good something that the state can hand to people ready-made? or is it something which in the end can only be secured by a man for himself? If the latter, then, without the necessary qualifications, the formula of the public welfare may

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readily go to work in a way to defeat its own end. In the first place, we do not know with any finality what is going to turn out to be valuable; and therefore if we limit freedom by our present notions of public value, we are bound to shut off future possibilities. Men must be left free to experiment; and while they are experimenting there is no way of distinguishing between fun for oneself, and profit for society. The most valuable things are usually discovered as the by-product of activities carried on for the fun of it; and if we frown upon these where their social outcome is not apparent, they will probably be lost. And the other main reason for not emphasizing too strongly the positive social value of acts, is the existence of that peculiar infirmity of human nature which leads us to identify with social value and social reason the particular type of life that appeals to us personally, and to be rather out of sympathy with other types. If there is one thing that attention to the primary source of good and of conduct in individuals will teach us, it is that there are all sorts of men in the world, and an immense variety of aims; and any theory of society which admits the principle of individual self-expression must start out with this as its datum. Of course in this multiplicity there will be found aims that are incompatible; but the safest thing is not to assume this incompatibility too easily.

A desirable policy of state action, therefore, will have to provide for two things. It will of course aim at a welfare open to all; but it can accomplish this only by bearing in mind constantly that good is unattainable except under the presupposition of individual liberty and initiative. I do not know that there is any phrase that expresses all this unambiguously; but what comes nearest to it is a third formula whose popularity has for some time been on the increase—that of *equal opportunity*. Here the word "opportunity" emphasizes the fact that a man's good is to be taken to mean freedom to secure his own good, and not any result whatever that may be conceived to be to his benefit. As such, it is opposed to any interpretation

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of the public welfare that rests on the ideal of paternalism. On the other hand, the word "equal" implies that to secure this result for all alike, restrictions are necessary. But in addition to this,—and here is the essential difference between such a point of view and the older individualism—it recognizes that to provide for the concrete exercise of human powers more may be necessary than merely to prevent the direct and obvious aggression of other people. It does not merely consider abstract possibilities; it looks to concrete *probabilities;* and if conditions exist which make it humanly certain that the average man will, if left to himself, be unable to surmount them, it does not consider it paternalism, or a violation of the principle of liberty, for the state to step in and try to change these conditions until the chances are more even. It leaves, therefore, a place not simply for negative, but for positive state action as well, provided we do not try to do things for individuals which they could do—the average man, and not merely the exceptional one—for themselves, but only go far enough to remove obstacles that render successful action out of the question.

And this suggests a further advantage which the principle may be thought to have over the alternative one of the general welfare. The latter carries a quantitative implication which is not free from obscurity. How widely extended must the benefit be before it becomes general? Possibly in a few instances the good that society can accomplish is universal in its extent. We could perhaps admit this in the case of public sanitation, by ruling out at any rate the doctors whose practice might be hard hit by the elimination of disease, and a few other special interests. But certainly the things that can be shown to be of obvious advantage, as ordinary men count advantage, to all citizens alike, are in any case very few in number. How much then may the good be restricted, and still remain public? Does the principle hold when a numerical majority is involved, and cease to hold if we have less? Now the "equal opportunity" formula does not need to

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bother with questions of this sort. The principle of equalizing as far as possible concrete opportunities expressly provides for narrow or "class" legislation in a sense. The very fact that conditions need equalizing carries with it the consequence that the beneficial results aimed at will be more or less limited in range. Factory legislation is of course in the interest of the working class. Probably in an indirect way it will benefit the rest of society in the end; but this is so remote and indefinite that, except for theoretical purposes, we do not need to have it much in mind. In fact it is a disadvantage to allow it any large place in practical discussion. The effect on the immediate beneficiaries is immediate and appealing; but when we begin to introduce these larger considerations, we are opening up a field so vast that nearly any outcome can be made plausible by a cunning disputant, and we find ourselves confused by academic and practically irrelevant complications. This is precisely the course which an opponent of such kinds of legislation will instinctively take,—turn the issue from the indisputable, the obvious facts, to supposed large and general consequences where a conclusive issue is almost impossible of attainment.

Of course the formula of equal opportunity, no more than any other, is capable of being applied mechanically. Its application depends not on an abstract rule of reason, but on a concrete knowledge of human nature and the conditions of its environment. But it does suggest a point of view which should, if it is accepted, help in the settling of questions of detail. What most generally it accomplishes is to create a burden of proof in favor of leaving men to attain their own ends. When the question is up of the relation of the state to some human activity, the true test is, not, Does this appeal to my natural tastes? or, Is it a thing which has proved itself already to have a certain kind and degree of value? or, Is it in accordance with the loftiest moral ideal? but, Can the activity live in harmony in the world together with other purposes, or at least is it such that the need of coercion can be progressively reduced?

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The aim, in other words, should be to produce a world with the richest variety of human life. So long as it appears that this variety is possible, it ought not to be restrained in the interests of some ideally best. The test of the morally best is to be applied only when two ends show themselves clearly incompatible, in that one of them prevents the proper achievement of the other. Here the notion of the best, or the better, of course has to come in; and it perhaps can be put in terms of the general welfare. But the greater number of human interests are not thus incompatible. I can stand people doing a great many kinds of things, even when I disapprove of these, provided they let me alone in the meanwhile; and the principle implies that this is on the whole the healthiest state of the world, and the one most likely to result in substantial satisfaction. It therefore calls for interference only when it can be clearly shown that a real imcompatibility exists; and in consequence it stands opposed to the alternative point of view which does not limit the applicability of the concept of the "best" to cases where another man's second-best actively conflicts, but would make it a proper ground of enforcement in every case, arguing, as a necessary inference, from superiority, to the desirability of enforcing superiority by law.

Before, however, the formula can be safely used, some attention needs to be given to the very ambiguous word "equal"; and to this end, accordingly, I may add a few rather inadequate remarks. It is perfectly obvious—a fact which has been dwelt upon almost *ad nauseam* by critics who are suspicious of the notion of equality—that in one sense men are not, and never will be, equal. Men have different abilities, different interests, different capacities for intensity of life and happiness; they differ in strength of mind and character, and in their power of service to the world. But these differences the formula itself demands that we take into account. Its end cannot be met by levelling the possibilities of satisfaction and of action down to the average. Greater powers must

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evidently have room for their appropriate exercise, and not be confined to limits set by narrower and less roomy natures. This demand it is which, in particular, is back of a majority of the more forcible objections to democracy; it is of course a perfectly justifiable one, and is none too easy to satisfy in practice. Meanwhile it is desirable to be clear as to just what it is. The greater the powers, the greater the results, but not of necessity the greater the opportunities. I mean that we should be careful not to interpret this last phrase as intending to say that it is more important that the man with greater powers should have an opportunity to exercise them, than that the man with lesser powers should have opportunity to exercise *them*. Comparing man with man, the common citizen has precisely as much right to live his life as the eminent citizen, so long as he does not on his side attempt to restrict eminence, as doubtless he is too much inclined to do. Of course one may say that the advantages to the world are incomparable in the two cases. If we are going to put it on a comparative basis we ought in fairness to compare, not a specially able with an average man, but special ability with the entire mass of average men; and then it becomes distinctly more questionable on which side the greater product lies. But it is not a question of numerical comparison, which we are entirely incompetent anyhow to handle. No principle of equal justice can give any ground for claiming to limit the opportunities for lesser talents simply because my own talents are, or I think they are, greater. The ideal is rather to arrange a world in which both alike shall get full exercise; and the disposition of the genius to think that the philistine ought to be sacrificed to him, is no more rationally justifiable than the disposition of the philistine to sacrifice the genius.

Something like this contrary claim has been made by two theories of a very different sort. On the one hand it is the claim of an aristocratic theory like that of Nietzsche. There are various difficulties to this attitude. If one is critically inclined, he cannot, to begin with, feel

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quite as sure as he could wish about the peculiar worth assumed to exist in the claimants. It is very easy to think too highly of the merits of those who pose as superiors; we habitually over-estimate the wisdom of the wise, as we usually discover when we come into more intimate contact with them. The source of strength in aristocracies has frequently, if not always, lain less in their superiority as individuals, than in their greater cohesion, itself a consequence not of intelligent foresight but of self-interest; wherever cohesion is secured the same political superiority shows, as in the modern "machine." But an extended criticism of aristocracy of the Nietzschean type is probably unnecessary, in view of the fundamental fact that it is plainly unworkable. As a matter of practical politics, the claim of the superman to get his good at the expense of the average man is not to be taken seriously. Any class, to be sure, possessed temporarily of superiority in any form, is pretty certain to be found acting in a way which implies the persuasion that the thwarting of its claim to satisfaction is a much more serious matter than where others are involved. In our own country, we have continually to note the confidence with which restrictions on the rich meet with a resentment that entirely overlooks the equal or greater hardships of the poor. The automobilist complains of the pedestrian who incommodes him by getting run over; the ship owner is greatly stirred by the injustice to capital from laws whose only justification is the mere desire to safeguard the lives of common sailors; the mistress of the house grows bitter over the interference by the cook or housemaid with her domestic arrangements, which would go so much more smoothly if servants would be satisfied to give up all recreation and social interests of their own: and such complaints strike a responsive note in the breasts of all who happen to have the same grievances. But the arguments show themselves singularly ineffective when directed toward such as still remain to be persuaded; and the growing recognition that under present conditions it is these to whom reasoning has chiefly to be adjusted,

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and not the ones who are convinced already, tends to confine such claims more and more to the privacy of conversation, and to eliminate them from the public arena. When the average man has to be persuaded, and that nowadays is practically everywhere, the disposition to make one man's satisfaction more important than another's fails to bear the test.

The other way in which the sacrifice of human possibilities in some men may be justified, is rather in terms of democracy itself. Here the point is, that it is right to sacrifice the chance for development and self-satisfaction in some, in order to increase the welfare, not now of the superior man, but of the majority. A further reason why the second formula for the function of the state—the welfare of the greatest number—seems to me not a wholly fortunate one, is that it readily lends itself to this outcome. If the good is the greatest total mass of happiness, why may it not be possible that this is to be attained through exploiting the minority in the interests of the rest? Thus it is not uncommon to hear men say, when it is pointed out that the health and happiness of a certain number of human beings is sacrificed in dangerous, ugly, and energy-exhausting occupations, Yes, it is unfortunate; but somebody has to do this in order to supply the basis of civilization, and give time and opportunity for self-development and the higher work of the world without which we should all be the worse off.

It is more difficult to meet this argumentatively than the other claim; nevertheless its case is by no means clear. As an appeal to the individual man, it might first be pointed out to him that he is running some risk when he acquiesces in a theory that justifies the sacrifice of some to the rest, since there is no guarantee that he may not thereby be taking sides against himself. If classes were hard and fast, unchangeable things, he might be safe in adopting a position which was sure of leaving the other man to hold the bag. But in the flux of modern life, however secure he may now appear to be, there is no certainty that tomorrow

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he may not himself be one of the unfortunates. Or again, turning to the more public aspects of the situation, it may be said that such a scheme is a doubtful guarantee of the end on which its justification rests. Of course if we assume, as usually is assumed implicitly, that the capacities of the exploited are so mean that there really is no place in which they could be of much greater use than at present, a case might be made. But this is the weakness of the position. Since human capacity is not on the surface, but has to be dug up, unless the conditions are such that opportunity is present even in apparently unpromising cases, it is quite certain that mankind will lose an incalculable aggregate of useful service that otherwise might have increased the common good. So too, if there is such a thing as a sympathetic side to man's nature, the happiness even of the favored members of society is bound to be tainted by the knowledge that there are fellow beings suffering from injustice, in that the claims to life on which we insist for ourselves are to them refused. And all history shows that this is a source of risk, as well as of sympathetic distress: we shall have on our hands that most dangerous of combinations, a class moved by a strong sense of aggrievement, which we cannot even have the consolation of denouncing as unreasonable and factious, since the natural claim of justice, as it appeals to the impartial mind, is on its side rather than our own.

My general point is, then, that the principle of equality means the equal right of everybody to develop those innate capacities the exercise of which constitutes the main good of life; and that this is so far from failing to recognize the claims of the superior man, that it emphasizes his special requirements, and the need, therefore, of the appropriate conditions for meeting these. But it refuses to allow this claim the moment it begins to suppress other claims. A thousand dollar note constitutes in a certain sense a greater claim against the government than a dollar bill; but the government is under precisely as much obligation to meet the latter debt as the former. Furthermore, it

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may be added, without much comment here, that the formula limits the claim to an opportunity for actual self-expression, and says nothing about extraneous rewards; these need to be settled by another principle, that of social expediency. The bare principle of equality does not tell us anything about the money rewards either of the less able, or of the more able man; it refuses to say that greater capacity deserves a greater income, or that less capacity deserves an equal income. It certainly does not say that all people ought to have the same things; for people do not all want or need the same things, and there is no important reason for giving them what they do not want. Nor does it furnish any necessary basis for the traditional interpretation, made use of in the practice of democracy, that every citizen has an equal right to office. In the sense that there should be no arbitrary rules of exclusion, this is true; but clearly not in the sense of anything like rotation in office. Any reasonable understanding of the demands of life involves training and specialization; and to insist upon the equal right of the competent and the incompetent would in reality be to sacrifice the real interests of both.

Meanwhile in refusing to allow the right which the more able man has to autonomy of life, to jeopardize that of the less able, an objection may possibly be raised. There is one human good in particular which has always ranked high in the estimation of men, and which has been mixed up in most of their troubles—the desire for power. Now in spite of the claims that power can show to be regarded as a normal form of self expression, it seems to me that in terms of the formula there can be no such thing as a "right to power." No man can claim that his ability, through the possession of advantages of birth, or property, or his superior knowledge or skill, to determine the way in which other people shall live their lives, and to decide for them where he would resent a similar dictation in his own case, is a thing that ought to be guaranteed to him. On the contrary, the whole direction of the social movement ought to be in the direction of removing such power of one

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man over another, and setting each on his own feet, with the ability, as something capable of being actually realized in practice, to shape his own career.

There are two main objections to be brought against this conclusion. Would it not, in the first place, seriously diminish the content of human good to rule out a motive which has actually played so large a part in human affairs? But to this it may be replied that there still remains a form which power may take that is not open to the charge of contradicting the principle of equal freedom. This is the form which we distinguish by the term "influence." By influence, I mean that control over the actions of other individuals which does not depend on their helplessness, but rather upon their own free decision. It is the ability to get them to do what you want, not by force, but by persuasion. And influence, it may be argued, is the most satisfying form of power in the end. It really involves more ability of the highest order to lead men than to drive them, and therefore more real satisfaction in the exercise, to say nothing of its being a more secure possession; and it is the goal toward which the ambition for power has steadily been moving as civilization has advanced. To be sure, influence usually involves a certain opportunity for using the leverage of a large following to exercise also some measure of coercion over others. But this is an incidental and separable appendage to the possession of influence, which commonly marks the limit of its salutary exercise; and there can be no serious complaint if society refuses to allow it to go to such a length.

The second objection rests upon the need of subordination for purposes of efficiency. But here also a distinction can readily be made. Of course for various purposes in particular, power may be delegated to individuals, by law or otherwise. Since co-operation involves leadership, there must be rules of subordination established temporarily for the purposes of workmanship. But it should be authority that has reference only to the means to an end, and not to the end itself; in other words, if a man enters upon a

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co-operative undertaking he should submit to the authority required for its successful accomplishment, but he ought to be free from any compulsion to enter the undertaking in the first place. And in so far as power exists which practically determines not only what a man shall do after he has made his choice, but limits his choice also to this thing rather than that, it is power that has no grounding in justice.

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LAW AND FORCE IN INTERNATIONAL AFFAIRS.[1]

SAMUEL P. ORTH.

IT IS to-day perfectly apparent that ordeal by battle has not been eliminated from the conduct of international affairs. This is, however, not evidenced merely by the present war, but also by the willingness with which vast armaments are provided; by the general sentiments of publicists and statesmen; by the enthusiasm of the multitudes over warlike measures; and even by the blending of conservatives and radicals in behalf of measures pretended to be for defense, but which are at bottom a reversion to force as an arbiter of international differences.

It is commonly accepted that the principal reason why the reign of law is so tardy in international affairs, while in domestic affairs trial by rule has largely supplanted trial by violence, is that in the state there is one overruling sovereignty to enforce the mandates of law, while in international affairs there is no such over-lordship. This presupposes that, if there were an international organization of force, corresponding to courts, sheriffs and constables, international differences would practically be reduced to litigious routine. This conclusion ignores those fundamental conditions which alone will make such an organization effective.

In order to have a system of law among nations, whose sanction should be reason and conscience or organized consent rather than force, that is to say, before there can be a reign of law among nations without the constant threat of an appeal to arms, three things are essential: (1) there must be a body of common interests, universal desiderata, or needs which every nation recognizes; (2) there must be a basic unity of opinion among the nations to sanction this code of needs; (3) there must be an organ-

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ization for action to determine procedure and to enforce its mandates.

I. It is true that the more advanced nations (those now at war!) have, through diplomatic or other international agencies, laid down a number of principles which should guide international action. Custom and a general sense of right and wrong have contributed to this body of international law. In recent years, through conventions, treaties, etc., important additions have been made to international usage. All this is most important. It is the beginning—but only the beginning—of the substitution of reason for force in international matters.

The bulk of this law arises either out of commercial needs and attempts to deal with problems of international trade, or it deals with the conduct of nations in time of war, either as belligerents or neutrals. It plainly recognizes force as a means of settling international controversies. International thinking (international consent) has not yet come to the point of outlawing war, as municipal law has outlawed the mob. It is true that international law has dressed the mob in a uniform, submitted it to discipline under responsible officers and made an army out of the throng. It has thrust certain humane responsibilities upon it, such as care of captives, solicitation for the wounded, respect for the flag of truce, etc. So by means of international agreements, it has been attempted to mitigate the woes of war.

But such common agreements do not eliminate war, or the less stringent forms of applying force, as, for instance, the peaceful blockade. They do not declare for what purpose a nation may go to war. A nation may declare a war of aggrandizement, become an international blackguard; or a nation may be compelled to resort to force in self-defense; or in defense of a great principle, such as the inviolability of treaties. But there is no restraint put upon nations as to the causes which are deemed to be a justification for a resort to force. That, in the present war, every nation has been eager to justify itself in the

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eyes of the world is an indication that a world sentiment is forming on this question. A century ago militarists cared nothing for the world's opinion.

As things are now, such international interests as have been established by law rest upon the principle of national duress. A world bully is possible under these conditions. And such a nation would not shrink from moral condemnation. The present conflict reveals how these international usages and agreements are shattered by war. We see to-day that the integrity of international law reposes in the lap of neutrals, not in the opportunism of belligerents.

II. This leads me to say that the fundamental element in substituting law for force as the sanction of international procedure is a basic unity of opinion upon which to establish such law. There must be an international comity of reason. That this has not been more fully developed is due to a number of causes. Among others I name:

1. Ethnic differences. A good deal has been said about ethnic unity as an excuse for resort to force. But ethnic homogeneity is found in only a few states and these are either small or not in the van of what is called civilization. In fact, such unity is found to-day only in savage and barbarous tribes. Ethnic bonds or instincts are paramount in savage tribes, and civilization is supposed to act as a sponge in erasing, not racial differences, but racial hatreds. Certainly the leading European nations can not claim ethnic unity. The disparity in Russia and Austria-Hungary, for instance, is extreme. The United States is an example of the sort of ethnic unity that is developing under modern systems of transportation and migration.

But, in spite of these vast admixtures of population, the tribal touch is still persistent in institutions, rather than in individuals, especially in religious and legal institutions, which are the least pliable of social institutions. Of these the religious motive is the more fervent, but the legal the more persistent. Illustrations of this will readily occur to the reader.

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Yet such has been the influence of machinery and of transportation in eliminating tribal isolations, that vast alliances, world alliances, are now made between nations of the most diverse religious beliefs and legal practices.

2. There is a second obstacle to forming a conception of international obligations and duties: namely, the development of political habits. For our purpose it may be put in this way: How have the people of a given nation been taught to look upon force, as a primary or secondary inducement to obedience? Does a Teuton obey the multitudinous commands issued by his government because he is afraid or because he wishes? Does an Englishman grumble at every new governmental encroachment because he feels himself above law and entirely capable of self-regulation? What is liberty to a Celt or a Slav, or an American?

Here might be included the qualitative differences, differences in ideals of justice, of right and wrong, of fair dealing. For instance, the approach of the Roman law to the problems of communal and individual responsibility is very different from the approach of the common law. When it comes to international action the citizen applies the criterion of justice to which he is accustomed. He approaches the world problem from his own door-yard.

Closely linked with these habits and ideals are the forms of government under which people have been accustomed to act. There is a difference between the attitude of the democrat toward international politics and the attitude of the member of an autocratic government. One expects democracy to be more tolerant of others and less addicted to the appeal to force. I am not sure, however, that democracies are less prone to war, except that they are based on constitutionalism and this tends to impersonalize government, and remove the personal motive of fealty, which persists as a prime stimulus to enlistment.

3. It is a unity of these historic and ethnic elements, together with certain psychological conditions, that creates

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a third obstacle to international thinking. This is nationalism.

Nationalism has played the part in world development that individualism has played in social development. Two years ago we were inclined to believe that a new internationalism based on a new nationalism had arrived. The many international societies, of both practical and cultural nature, led some to think that a world habit of thought was forming. The pronunciamentos of the international socialists, not only because of their vehemence and apparent earnestness, but especially on account of the vast numbers who professed adherence to them, were evidence of the de-nationalizing of the working man. Such a recrudescence of nationalistic particularism as we now witness was then supposed impossible. In a very large sense, this is a war of nationalities for nationalism. Over and over again we hear the warring nations proclaim their interest in the right of a nation—great or small—not merely to existence, but to self-determination.

It is difficult to state what is the criterion of a nationalism which produced the tragic results we now behold. It is clearly not ethnic, nor religious; nor is it language, literature or art. It is not economic organization, for machine industry has pretty well levelled the industrial world. It is a blending of all those elements, historic, political, cultural, economic, legal, social, added to the instincts of loyalty which are suggested to the mind when it uses the phrase "my country." It combines a sense of ownership and of obligation.

This conviction and its accompanying sentiments are skilfully marshalled by the ambitions of leaders and governments. And so, a very noble power may be traduced to ignoble uses. "My country" is opposed, in suggestion at least, to "your country"; "my kaiser" to "your king"; "my rights" to "your rights." When a government can thus, under the guise of patriotism, link each citizen personally and consciously to the destiny of the nation, it possesses a potent barrier against international reasoning.

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4. Add to this the further propensity of men to act less cautiously in the mass than as individuals, and you have the most immediate cause for resort to force rather than reason in the stress of international excitement. Why men act less humanely in bulk than as individuals, the psychologist must tell you. The lawyer accepts it as a fact. He knows that the individual ideal is crushed under the weight of numbers: that there is a difference between mass morality and individual morality. Self-control—which is the basis of all social order—vanishes readily in the crowd. Reason loses her appeal.

I suggest these as some of the obstacles toward forming that international reason and conviction which must precede a reign of law. There is no such binding element back of international law as is back of municipal law, because the conditions of unity are lacking. These conditions reside within the nations themselves. It must be admitted that it takes a high degree of self-control and tolerance to set aside one's own notions of national privilege and accept those of another. But that is what happens in municipal law, among individuals. It is the very foundation of legal justice. Until a group of people, more or less willingly, submit to such a common standard there can be no peace through law, but only peace through force, where each man carries a gun and defends himself—just as nations do to-day.

The history of international law illustrates the great difficulty of arriving at a common standard through national self-sacrifice. This is cogently illustrated by our American experience in arbitration matters. How much international thinking do our people put behind an arbitration treaty? Is there a background of average justice? How much give neutralizes the primary instinct of take? We who boast, in bad taste, of our love for peace, have been none too gracious in arbitral matters. We are ourselves an example of the difficulty of getting a nation into that frame of international thinking that makes international law possible.

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III. The third step in the substitution of law for force in international affairs is the organization of force. Many people think this should come first. It cannot. A common conscience must precede it.

What form such an organization would take is suggested by the form of homologous organizations in the state.

(1) It would provide a court whose rules and decisions would speedily, under the sanction of nations, form a body of procedural law. The difficulties in the way of the practical organization of such a court are very great. Every nation will wish to be represented on the Bench. Every practical detail of its organization will be contested.

It has been suggested that organized physical force need not be back of such a court, that its dignity and prestige would be so great that no defeated litigant would dare disregard or disobey its mandates, for shame of public (world) condemnation. I think this is demanding a good deal of human nature. Whether the boycott would be effective is also questionable.

Force will remain, for some years, an arm of justice.

(2) So that some form of international constabulary becomes necessary. A nation that would defy the judgment of a court it has helped to set up would defy treaties, be callous to moral opinion, and amenable only to the sort of persuasion it would itself use, viz., force.

My suggestion is, then, that the appeal to law, as a substitute for the appeal to force in international matters, depends upon the existence of those conditions that make law possible: and that these conditions are not so much dependent upon an international organization as upon the spirit and attitude of the nations themselves. Once you get such a unifying impulse and such a commonalty of reason, then you will not be long in getting such an effective organization of force as will be necessary to deal with the unwilling.

This imposes upon nations the obligation to foster the international mind. I suggest that:

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1. Anything that tends to create artificial distinctions between nations retards the development of international law and stimulates that sentimentalism and impulsiveness which leads to the resort to force. It encourages snap judgment and prevents that delay which is the enemy of a hasty temper.

2. Anything that, within the nation, tends to the exaltation of force over law tends to unfit a nation for international comity. Militarism, even when nourishing churches and universities at its iron breasts, is death to internationalism. A nation cannot rise into a fair ideal of international justice, above its own exaltation of violence.

That is to say, the two greatest hindrances to the international attitude are provincialism (which is often a synonym for patriotism); and the ideals of force as exemplified by militarism.

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"REAL" AND "IDEAL" FORCES IN CIVIL LAW.[1]

MORRIS R. COHEN.

JURISTS, like philosophers and artists, have always divided themselves into idealists and realists. Idealists are those who are so impressed with the ideal order, which visible things only partly embody, that they are charged with neglecting the poor brute facts. The realists are so impressed with the hard actual facts, especially the unpleasant ones, that they are charged with neglecting the possibilities of change or improvement inherent in things.

These differences seem to be primarily differences of emphasis, due to differences of temperament, but external conditions make one or other tendency predominate for a time. Up to a few years ago idealism held almost complete sway among teachers of philosophy in American universities, and our legal thought was dominated exclusively by a naive idealism which saw nothing in the law but justice and the accumulated reason of mankind. It has been suggested that the Hegelian idealistic philosophy was peculiarly fitted for an academic class,[2] and this is all the more probable when we remember the strength of the theologic or genteel tradition in American Academic life.[3] Thus we find beneath the idealism of both lawyers and philosophers the realistic motive of defending the established order,—witness the writings of William T. Harris, Ladd, and the followers of Caird, as well as the numerous books and articles in our law reviews written by men whose lives have been spent defending the interests of property. It would be interesting to trace the similarity of motives which led to the rise of a juristic realism in the writings of lawyers like Brooks Adams or Bentley, and the various

[1] Read at the Conference on Legal and Social Philosophy at Columbia University, Nov. 26, 1915.

[2] Talbert, *The Dualism of Fact and Idea in its Social Implication*, Pound. 24 *Harvard Law Review*, 600.

[3] Santayana, *Winds of Doctrine*.

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forms of protesting realism among the younger American philosophers. But that would carry us beyond the point I wish to make, which is, that in actual men the idealistic and realistic motives so interpenetrate that a sharp classification is apt to be superficial and misleading. Nevertheless, for purposes of understanding, such distinctions are indispensable, at least as starting points.

If, thus warned, we look for the realistic and idealistic motives in legal thought we find them in the conflicting views that law is reason or justice, and that law is force, the will of the sovereign, or the interest of the stronger or dominant class. The controversy between these two views has raged so often since Plato to his own satisfaction refuted the view of Thrasymachus that justice is the interest of the stronger, that it may seem hopeless to try to add anything. Nevertheless I believe progress may be made, not by the easy refutation of one side or other, but by a careful analysis of the factors in the situation on which the opposing claims are based. This is certainly not so interesting as the method of sweeping refutation, but its results, though meager, may be more substantial.

In nearly all modern jural and political discussion that styles itself scientific, law is defined as the will of the sovereign. Now if the sovereign, whoever or whatever that may be, is not the omnipotent himself but some human being or group, it is clear that there are limitations upon that will. Not even in autocratic Russia does everything happen in accordance with the will of the sovereign. Not only are many laws not enforced or obeyed, but the sovereign finds it impossible to express his will in the law itself. The Russian sovereign undoubtedly wants all his subjects to be patriotic and Greek Orthodox; he would give a great deal to get rid of his troublesome Jewish and Mohammedan subjects. But, while he may restrict them, he cannot make a law to get rid of them altogether—any more than he can make the Russian church Protestant or make its language French. Legally, of course, there may be

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nothing to prevent him—if from the legal standpoint any enactment of the sovereign, no matter how absurd or incapable of enforcement, is law. But that merely shows the limitation of the purely legal standpoint; for obviously in making the law, the sovereign, if he has any intelligence, will avoid enacting rules which cannot be enforced and which can only serve to show his impotence. Thus all intelligent law-making rests on the knowledge or estimate of what will be obeyed. The perception of this fact has led to the theory that all law rests on the consent, acknowledgement or obedience of the subjects.[4] This, however, overlooks the fact that in the freest commonwealth laws are obeyed which many people bitterly and emphatically resent. It is true that when I obey a law because of fear or external compulsion, I may still be said to exercise my sovereign prerogative of choice, since I may choose not to obey and take the unpleasant consequences. Nevertheless there is a real difference here—the difference between contributing to a relief fund and contributing to a highwayman or to a hostile invader. There is thus an empirical basis for the distinction between the part of the law founded on force (or external compulsion)[5] and the part that appeals to us as inherently just or natural.

Though realists and idealists have long disputed as to the relative importance of these external and internal factors in the law, it ought to be obvious that the proportion between them varies according to time and place; and it would be vain to try to settle it *a priori*. It is an historical question to be settled by empirical, statistical information. Few thoughtful jurists would to-day accept the extreme realistic position of Lassalle, and idealistic anarchists, who believe that the law rests exclusively on the police and the militia. While it is true that a small organized minority

[4] Bierling, *Zur Kritik der Juristischen Grundbegriffe*, I, pp. 66, 134 sq., II, 351 sq.; *Juristische Prinzipienlehre*, II, pp. 3 sq.

[5] Following the usage of sociologists I use the term *force* (when otherwise unqualified) in the remainder of this paper to denote any determining factor, ordinary usage, also, employs such expressions as "the force of his arguments," etc.

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can overawe and compel obedience from a large unorganized majority, it is not a fact that the majority of people in any existent community under a civil law feel themselves in the position of a crowd of unarmed men held up by a lone bandit. The amount of awe and veneration for those in authority is too widespread even among the most oppressed classes.[6] Contrary to the anarchistic analysis, also, most people prefer to obey rather than take the initiative and responsibility of commanding. The police and militia cannot possibly explain why the bulk of the civil law is obeyed; because the very existence of a modern military or police force depends upon a general habit of obedience and respect for law in the coummunity. If most men preferred to settle their disputes with axes or pistols instead of by means of an expensive legal duel, a modern police force would be utterly futile. Moreover, there is some truth in the contention that the state or sovereign does not order any one to obey the rules of the civil law. The state does not order any one to keep his contracts, to register his deed, to attest his will or refrain from slandering his neighbor. The rules of the civil law are rules for settling private disputes. The state supports the judgment of the judge to a very limited extent—mainly by disposing of *some* of the goods (if there are any) of the one against whom judgment has been rendered. This distinction may seem to be very thin, but it calls our attention to the important fact that where private interests of individuals do not demand it there will be no enforcement of the law. Private interests (which include matters of honor, the desire for revenge, or satisfaction of outraged justice) thus supply the motive force. The sanctions of the civil law take this force for granted and regulate it just as river works regulate the current but presuppose gravity as the motive force.

These considerations seem obvious enough. Yet all the controversies between those who hold the imperative theory and those who hold the declarative theory of the law may

[6] See Hume's *Essays* (Green and Grose), I, 110.

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be traced to an overemphasis of what we have called the regulative and motive forces.

When we come to consider the law as a regulative force and the factors which make it what it is, realistic jurists rely on political or economic power—the idealists on reason and justice. Now it ought to be clear that these factors cannot be mutually exclusive, since for the most part they move on different levels. Moreover, in the absence of a quantitive social science enabling us to measure in some definite way the relative weights of different factors, it seems as futile to discuss which is more potent, economics or ethics, as it would have been to discuss the question which is more powerful, heat or electricity, before the discovery of the correlation of energies. Nevertheless, these one-sided views, that law is determined exclusively by political, economic, logical or ethical forces, are with us and the task of criticising these theories cannot be dispensed with.

The political interpretation of law need not detain us long, since it is clearly in the field of legislation that political forces find their primary expression, and legislation is a subordinate factor in civil law. I do not mean to deny the important place of legislation in the development of our property law, nor the way the legislation of our day is transforming the law of industrial and commercial relations. But legislation becomes effective in the body politic only after it has been digested by the process of juristic interpretation and judicial decision. And while it would be folly to maintain that the political convictions of judges never find expression in the law, it seems a fact that jurists and judges do not always represent a sufficiently homogeneous political interest to make the influence of their unconscious political bias the predominant one in the law.

The economic interpretation of law takes its starting point from the perception of the fact that the great bulk of the law deals with economic interests or interests having an economic value. When this is combined with the im-

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perative theory of law and a very simple division of society into the dominant class and what may be called the subject class, we have the views of Loria and Brooks Adams,[7] according to whom law is the expression of the economic interests of the dominant class. In the orthodox Marxian system this is attached to a system of Hegelian dialectics, in which the system of economic production acquires all the potency of the Hegelian Absolute Idea generating all social institutions. The adherents of this view have been able to bring forward relatively few instances from legal history or from the actual law of to-day that are indisputably examples of class interests expressing themselves in the law. This argument, however, is not conclusive. Legal history is a biased witness, since most existing legal histories have been written by idealogists who, ignoring all non-legal factors, have written the history of the law as if it were a continuous exercise in which juristic logic were the sole determining factor. A concrete example will make this clear. Professor Burdick has written a learned article[8] attacking the validity of several illustrations of Brooks Adams' that the law is determined by the interests of the dominant class. Professor Burdick's procedure consists in showing that there were plenty of precedents and logical reasons for the judges deciding as they did. Obviously, however, this utterly fails to disprove Mr. Adams' contention, since the existence of a good logical reason does not preclude the co-existence of a real economic one. To disprove the existence of unconscious economic bias as a determining factor, Professor Burdick would have to show that equally good reasons and precedents could not possibly have been adduced on the other side; and that is out of the question, since the law is not a closed logical system like pure mathematics, in which every proposition is absolutely necessitated. Was there ever a case carried up to a higher court

[7] Loria, *Economic Foundations of Society;* Brooks Adams, *Theory of Social Revolutions,* and *Centralization and Law,* Lects. I, II.

[8] 25 *Harvard Law Review* 349.

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where the losing side did not have reasons and precedents on its side? Legal reasoning depends on multitudes of assumptions, based on experience and judgments as to public policy. The fellow-servant rule, which Professor Burdick defends, was decided by Lord Abinger and Chief Justice Shaw expressly on ground of public policy. If the delegate of a butcher boys' union or a brakemen's association were the judge, would he have had the same view of public policy? It would be foolish to maintain that, in view of the criticisms which the rule in question has received from the ablest and best trained legal minds.[9]

When lawyers speak of a decision as being necessitated by logic, that the judges could not have helped making the particular decision which they did, it is because they accept all the premises on which the decision is based. But while all this is true, it is absurd to say that juristic logic has no influence at all in making decisions what they are. Only a fanatic devotion to the logical consequence of a preconceived theory could induce people so to ignore human experience as to deny that man generally, and legislators and judges in particular, are ever influenced by reasons and arguments. If economic interests as Mr. Adams tells law students, are bound to express themselves in the law as much as the earth is bound to pursue its path around the sun, why teach law at all? Obviously, the legally trained mind decides differently from one not so trained.

Indeed, the whole theory of economic determinism applied to the law illustrates the powerful influence of popular *theories* as to what science is. It is popularly supposed that there is a physical force, gravity, which does something to keep all the planets in their proper places. This conception of force, however, is an anthropomorphic survival of primitive animism. Careful modern physicists do not

[9] Pollock, *Genius of the Common Law* 104–105, Holmes, 12 *Harvard Law Review* 456, and Dicey, *Law and Public Opinion* 280. Indeed, the Scotch courts did rule differently (Sword *v.* Cameron, 1 Dunlap 493) until overruled by the English House of Lords in the Bartonshill cases, and in Merry *v.* Wilson.

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use force in any such sense. Indeed, there is a very marked tendency to give up the notion of force altogether.[10] At any rate, actual physics offers no analogy for a system dominated by a single force; and, as Aristotle pointed out, it is a sign of lack of scientific culture to try to carry over the exactness of mathematics and physics into fields where they do not apply (because of absence of exact measurements). Certainly, no one surveying the facts of our complicated social system without a preconceived theory would see in it a single dominant class. Social and economic conflicts take place along many different lines, and these lines, like the line in employer and employee, Catholics and Protestants, agriculturists and manufacturers, North and South, cross and recross each other. The law is designed to be the means of regulating these conflicts. As a matter of fact, the bulk of the civil law does not deal with any special class interests at all, but rather with private arrangements in which the members of the dominant class, whatever that may be, may sometime be more interested than others. The law of contracts, mortgages, sales, and wills, laws against fraud, seduction, assault and slander, marriage laws, divorce laws, and the like, are certainly not imposed upon an unwilling population by a dominant class. Professor Pound has actually shown[11] how considerations of juristic logic and consistency have led, as in the case of the law of partnerships, to results directly contrary to the interests of the commercial class, which is supposed to be the dominant one.

Similar considerations are true with regard to ethics. It must be granted that ethical ideas as to right and wrong are somewhat plastic, that men readily convince themselves that what is to their interest is just. This is facilitated by the way in which given groups habitually

[10] Herz *Principles of Mechanics*. Introd. Russell, *Principles of Mathematics*, 482 says: "The first thing to be remembered is—what physicists nowadays will scarcely deny—that *force* is a mathematical fiction, not a physical entity."

[11] 24 *Harvard Law Review* 603–4 and 25 *Harvard Law Review* 167.

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identify their interests with that of the whole community. Thus, the working classes habitually speak of themselves as the people; the middle classes think of their interests as the interests of the public; while the commercial classes always refer to their interests as those of the country. Yet for all that, it is absurd to deny the fact that ethical ideals have been powerful factors in making the law. Indeed, when we survey the history of the law, it would seem that religion has moulded the greatest part in the law under which mankind lives. Religious conceptions, for instance, have had more to do with making our marriage laws than anything else. It is religious conception which prevents euthanasia. The changed attitude of the law as to the relation between husband and wife, which marks the nineteenth century, is not, as a matter of fact, due to any economic change, but part of the general movement of humanization, which shows itself also in our attitude to the criminal, the insane, and the helpless. Whether we take the pretorian law, English equity, or the influence of seventeenth and eighteenth century natural law on international law, constitutional law, and criminal law, we everywhere find ethical ideals exercising profound influence, apart from, and often contrary to, the interest of the class which the jurists represent.

All this, of course, does not impugn the great importance of economics in law, both as determining the social interests to be safeguarded and the incidence of judicial decision. But the true relation of juristic technique to economics is, I apprehend, similar to the relation of the technique of the engineer to economics. Bridges are built and their location and material determined by economic reasons, but the technique of the engineer is independent of economics. The modern tendency to belittle the importance of logic, known as anti-intellectualism, is part of the reaction against the old liberalism which rested on a rationalistic basis. Legal liberalism as represented by a man like Coke viewed the law as the dictate of reason, just as the adherents of the enlightenment tried to prove all things. But we know

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that all things cannot be proved, since proof rests on assumptions; and reason cannot determine the whole law because reason has to do with judgments (determining the appropriateness of means to end) and cannot determine the ultimate ends which are a matter of ultimate choice. Hobbes is, therefore, right in putting will above reason in the law. But when we have said that reason determines the means appropriate to a given end, we have by no means belittled the importance of reason, for the means at our disposal, as I have tried to show on another occasion,[12] very frequently determine the ends which we are to choose. A study of juristic logic, therefore, would be of the greatest assistance in determining the relative places of the imperative and the rational elements in the law. Logicians have neglected this task because the logic of imperatives has not been developed.[13] It must be noted, however, that legal propositions are logically imperative only in the sense in which the directions in a guide book are imperative. The proposition "take the car going to the north" is grammatically an imperative sentence, and logicians have excluded such sentences from the category of propositions. In point of fact, however, this imperative is based upon a judgment that the taking of such a car is necessary to reach the desired end. That is, if you want to get there, you must take the car. The subjunctive clause being understood, is not expressed. Similarly, the law says if you want your title or right secured, you must register your deed, give notice, etc. The legislator also, in his enactments, makes judgments that certain situations will arise and that if certain arrangements or provisions are made, certain consequences will follow. It may be urged that the logical question, whether these conclusions do or do not follow, is immaterial to the enforcement of the law, that if the legislator is mistaken in his judgment, those charged with the enforce-

[12] *Journal of Philosophy*, April 10, 1914.

[13] A beginning has been made by Zitlemann, *Irrtum und Rechtsgeschäft*, pp. 220 sq.; W. Jellinek, *Gesetz, Gesetzesanwendung*, etc., pp. 30 sq., and H. Maier, *Psychologie des emotionalen Denkens*, pp. 636 sq. and pp. 736 sq.

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ment of the law are not responsible for the results; but the situation is not so simple. We cannot eliminate the judgment from the law, because those who have to enforce the law must be guided by this judgment in order to determine the actual contents of the law. The process of judicial interpretation, which is necessary for making all legislation effective, cannot be worked out by mere fiats. It must use a developed logical machinery. It must act under rules of justice (whose content is determined by social science). It must also invent modes of adjustment on the basis of logical distinctions. The abuse of logical distinctions frequently leads to the vicious results of *Begriffsjurisprudenz*.[14] But this does not mean that the use of logical distinctions can be dispensed with.

I have not the time to develop here the technique of ethical judgments, which are equally important in the development of the law. I may barely mention one objection against the fruitfulness of the principles of ethics or natural law in jurisprudence suggested by Planiol.[15] He enumerates several principles of natural law or justice, and then intimates that such principles will not carry us far in the development of the concrete law e. g. of mortgages. Now, it is perfectly true that if you look at these principles by themselves, very little of the law of mortgages can be deduced from them. But so also if you look at the axioms of geometry in their abstract form. Few concrete geometric propositions could be deduced from them immediately. This, however, does not mean that these principles are not operative. Principles of justice are assumed in almost all branches of the law, but they are applied to the concrete material of social life, and the conclusion is based, therefore, not merely upon ethics, but also on the factual judgments and the juristic technique which operates with them.

The moral of my meagre tale is that the enforcement of the law, which Professor Pound rightly calls the life of

[14] See my article in the *Harvard Law Review*, April 1916.

[15] *Traité du droit civil* I, pp. 2–3 cf. Demogue *Les notions fondementales* pp. 19–20.

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the law, depends not only upon the maximum satisfaction of all the conflicting interests which enter into social life, but, also, that this, in turn, depends to some extent upon the scientific development of jurisprudence and ethics. This moral also has applications to the realms of public law and international affairs. Our constitutional law will become effective only so long as it recognizes itself as a means for bringing about social adjustment between conflicting claims, not by mere fiat, but by a scientific determination of interests in accordance with prevalent feelings of right and justice. Our labor troubles in Colorado, and the threat of civil war in connection with the Irish Home Rule problem, show the breakdown of a constitutionalism which does not take count of the actual demands and aspirations of different classes. Similarly with regard to international affairs. It has become the fashion to laugh at international law and to deny that it is in any sense law, because of the absence of an international police. But if it is true that there are other forces besides the police which make the law, there is no reason why considerations above deduced from private law may not apply to international law.

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FORCE AND COERCION.

JOHN DEWEY.

THE empirical perplexities which attend the question of the relationship of force and law are many and genuine. The war brings home to us the question not only of the relation of force to international law, but the place of force in the economy of human life and progress. To what extent is organization of force in the multitude of ways required for the successful conduct of modern war a fair test of the work of a social organization? From another angle, the reform of our criminal law and our penal methods compels us to consider the significance of force. Are the Tolstoians right in holding that the state itself sets the great example of violence and furnishes the proof of the evils which result from violence? Or, from the other side, is not the essence of all law coercion? In the industrial domain, direct actionists lead us to inquire whether manifestation of force, threatening and veiled if not overt, is not, after all, the only efficacious method of bringing about any social change which is of serious import. Do not the usual phenomena attending strikes show us that the ordinary legal forms are just a kind of curtain drawn politely over the conflicts of force which alone are decisive? Are our effective legislative enactments anything more than registrations of results of battles previously fought out on the field of human endurance? In many social fields, reformers are now struggling for an extension of governmental activity by way of supervision and regulation. Does not such action always amount to an effort to extend the exercise of force on the part of some section of society, with a corresponding restriction of the forces employed by others? In spite of the fact that the political thinking of the seventeenth and eighteenth centuries is out of date, were not the thinkers of that period clearer headed than we are in acknowledging that all

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political questions are simply questions of the extension and restriction of exercise of power on the part of specific groups in the community? Has the recent introduction of an idealistic terminology about moral and common will, about juridical and moral personalities, done anything but muddle our minds about the hard fact that all our social questions at bottom concern the possession and use of force; and the equally hard fact that our political and legal arrangements are but dispositions of force to make more secure the other forms of its daily use?

In taking up the writings of the theorists it is not easy to persuade oneself that they are marked by much consistency. With a few notable exceptions, the doctrine that the state rests upon or is common will seems to turn out but a piece of phraseology to justify the uses actually made of force. Practices of coercion and constraint which would be intolerable if frankly labelled "Force" seem to become laudable when baptized with the name of Will, although they otherwise remain the same. Or, if this statement is extreme, there seems to be little doubt that the actual capacity of the state to bring force to bear is what has most impressed theorists, and that what they are after is some theoretical principle which will justify the exercise of force; so that in a great many cases such terms as common will, supreme will, supreme moral or juridical personality, are eulogistic phrases resorted to in behalf of such justification. The one thing that clearly stands out is that the use of force is felt to require explanation and sanction. To make force itself the ultimate principle is felt to be all one with proclaiming anarchy and issuing an invitation to men to settle all their difficulties by recourse to fighting it out to see which is the stronger. And yet what every political student is profoundly convinced of, is, I suppose, that at bottom every political struggle is a struggle for control, for power.

Although I have raised large questions, it is not my ambition to answer them. I have but outlined a large stage upon which to move about some quite minor figures.

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In the first place, something can be done, I think, by clarifying certain of the ideas which enter into the discussion. We may I think profitably discriminate the three conceptions of power or energy, coercive force, and violence. Power or energy is either a neutral or an eulogistic term. It denotes effective means of operation; ability or capacity to execute, to realize ends. Granted an end which is worth while, and power or energy becomes an eulogistic term. It means nothing but the sum of conditions available for bringing the desirable end into existence. Any political or legal theory which will have nothing to do with power on the ground that all power is force and all force brutal and non-moral is obviously condemned to a purely sentimental, dreamy morals. It is force by which we excavate subways and build bridges and travel and manufacture; it is force which is utilized in spoken argument or published book. Not to depend upon and utilize force is simply to be without a foothold in the real world.

Energy becomes violence when it defeats or frustrates purpose instead or executing or realizing it. When the dynamite charge blows up human beings instead of rocks, when its outcome is waste instead of production, destruction instead of construction, we call it not energy or power but violence. Coercive force occupies, we may fairly say, a middle place between power as energy and power as violence. To turn to the right as an incident of locomotion is a case of power: of means deployed in behalf of an end. To run amuck in the street is a case of violence. To use energy to make a man observe the rule of the road is a case of coercive force. Immediately, or with respect to his activities, it is a case of violence; indirectly, when it is exercised to assure the means which are needed for the successful realization of ends, it is a case of constructive use of power. Constraint or coercion, in other words, is an incident of a situation under certain conditions—namely, where the means for the realization of an end are not naturally at hand, so that energy has to be spent in

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order to make some power into a means for the end in hand.

If we formulate the result, we have something of this kind. Law is a statement of the conditions of the organization of energies which, when unorganized, conflict and result in violence—that is, destruction or waste. We cannot substitute reason for force, but force becomes rational when it is an organized factor in an activity instead of operating in an isolated way or on its own hook. For the sake of brevity, I shall refer to the organization of force hereafter as efficiency, but I beg to remind you that the use of the term always implies an actual or potential conflict and resulting waste in the absence of some scheme for distributing the energies involved.

These generalities are, it will be objected, innocuous and meaningless. So they are in the abstract. Let us take the question of the justification of force in a strike. I do not claim, of course, that what has been said tells us whether the use of force is justified or not. But I hold that it suggests the way of finding out in a given case whether it is justifiable or not. It is, in substance, a question of efficiency (including economy) of means in the accomplishing of ends. If the social ends at stake can be more effectively subserved by the existing legal and economic machinery, resort to physical action of a more direct kind has no standing. If, however, they represent an ineffective organization of means for the ends in question, then recourse to extra-legal means may be indicated; provided it really serves the ends in question—a very large qualification be it noted. A recourse to direct force is a supplementation of existent deficient resources in effective energy under some circumstances.

Such a doctrine is doubtless unwelcome. It is easily interpreted so as to give encouragement to resorting to violence and threats of violence in industrial struggles. But there is a very large "if" involved—the "if" of greater relative economy and efficiency. And when so regarded, it at once occurs to mind that experience in the past has

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shown that it is not usually efficient for parties to be judges in their own cause: that an impartial umpire is an energy saver. It occurs to mind, also, that the existing legal machinery, whatever its defects, represents a contrivance which has been built up at great cost, and that the tendency to ignore its operation upon special provocation would so reduce the efficiency of the machinery in other situations that the local gain would easily be more than offset by widespread losses in energy available for other ends. In the third place, experience shows that there is general presumption on the side of indirect and refined agencies as against coarse and strikingly obvious methods of utilizing power. The fine mechanism which runs a watch is more efficient than the grosser one which heaves a brick. Thus the bias against any doctrine which seems under any circumstances to sanction resort to personal and primitive methods of using force against the more impersonal juridical contrivances of society turns out to be *prima facie* justified on the principle of efficiency in use of means.

Over and above this bare presumption, it must be admitted that our organized contrivances are still so ineffective that it is a delicate matter to tell how far a standing menace to resort to crude methods may be a necessary stimulus to the better working of the more refined methods. There is a general presumption in politics against doing anything till it is clearly necessary; and indication of potential force operates as a sign of necessity. In other words social reorganization is usually a response to a threatened conflict—witness the present "preparedness" agitation.

This conclusion that violence means recourse to means which are relatively wasteful may be strengthened by considering penal measures. Upon the whole, the opinion seems to be current that in such matters force is hallowed by the mere fact that it is the State which employs it, or by the fact that it is exercised in the interests of "justice" —retribution in the abstract, or what is politely called

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"vindicating the law." When the justification of force is sought in some kind of abstract consideration of this sort, no questions are to be raised about the efficiency of the force used, for it is not conceived as a specific means to a specific end. It is the sacrosanct character thus attributed to the State's use of force which gives pungency to the Tolstoian charge that the State is the arch-criminal, the person who has recourse to violence on the largest scale. I see no way out except to say that all depends upon the efficient adaptation of means to ends. The serious charge against the State is not that it uses force—nothing was ever accomplished without using force—but that it does not use it wisely or effectively. Our penal measures are still largely upon the level which would convince a man by knocking him down instead of by instructing him.

My treatment is of course very summary. But I hope that it suggests my main point. No ends are accomplished without the use of force. It is consequently no presumption against a measure, political, international, jural, economic, that it involves a use of force. Squeamishness about force is the mark not of idealistic but of moonstruck morals. But antecedent and abstract principles can not be assigned to justify the use of force. The criterion of value lies in the relative efficiency and economy of the expenditure of force as a means to an end. With advance of knowledge, refined, subtle and indirect use of force is always displacing coarse, obvious and direct methods of applying it. This is the explanation to the ordinary feeling against the use of force. What is thought of as brutal, violent, immoral, is a use of physical agencies which are gross, sensational and evident on their own account, in cases where it is possible to employ with greater economy and less waste means which are comparatively imperceptible and refined.

It follows from what has been said that the so called problem of "moralizing" force is in reality a problem of *intellectualizing* its use: a problem of employing so to say neural instead of gross muscular force as a means to ac-

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complish ends. An immoral use of force is a stupid use. I sometimes hear apologies for war which proceed by pointing out how largely all social life is a disguised contest of hostile powers. Our economic life, so it is said, is but a struggle for bread where the endurance and even the lives of laborers are pitted against the resources of employers. Only lack of imagination fails to see the economic war, the industrial battlefield with its ammunition trains and human carnage. Let the point be admitted. What still remains true is that the decisive question is the level of efficiency and economy upon which the deploying of forces goes on. Our present economic methods may be so wasteful, so destructive, as compared with others which are humanly possible, as to be barbarous. Yet competitive commercial methods may represent an advance in the utilization of human and natural resources over methods of war. In so far as they involve greater indirection and complexity of means, the presumption is that they are an advance. Take, however, on the other extreme the gospel of non-resistance. Except upon a doctrine of quiescence more thorough-going than any St. Simon Stylites has ever adopted, the non-resistance doctrine can mean only that given certain conditions, passive resistance is a more *effective* means of resistance than overt resistance would be. Sarcasm may be more effective than a blow in subduing an adversary; a look more effective than sarcasm. Only upon such a principle of expediency can the doctrine of non-resistance be urged, without committing ourselves to the notion that all exercise of energy is inherently wrong—a sort of oriental absolutism which makes the world intrinsically evil. I can but think that if pacifists in war and in penal matters would change their tune from the intrinsic immorality of the use of coercive force to the comparative inefficiency and stupidity of existing methods of using force, their good intentions would be more fruitful.

As my object is rather to make a point clear than to convince anyone, let me take another example. In the

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labor struggle we sometimes hear a right of free labor and free choice appealed to as against the movement for a closed shop. Men like President Eliot are sincerely convinced that they are continuing the fight for human freedom. Perhaps they are. I do not pretend to pass upon the merits of the question. But *perhaps* they are only fighting in behalf of the retention of methods of waste against those of efficient organization. There was a time when our ancestors had the personal right of inflicting punishment upon offenders. When the movement set in to restrict this office to a limited number of designated officers and thereby to deprive the mass of their prior right, one wonders whether the spiritual ancestors of President Eliot did not protest against this invasion of sacred personal liberties. It is now clear enough that the surrender of the power was an incident of organization absolutely necessary to secure an efficient utilization of the resources entering into it. It may turn out in the future that the movement for the closed shop is an incident of an organization of labor which is itself in turn an incident in accomplishing a more efficient organization of human forces.

In other words, the question of the limits of individual powers, or liberties, or rights, is finally a question of the most efficient use of means for ends. That at a certain period liberty should have been set up as something antecedently sacred *per se* is natural enough. Such liberty represented an important factor which had been overlooked. But it is as an efficiency factor that its value must ultimately be assessed. Experience justifies the contention that liberty forms such a central element in efficiency that, for example, our present methods of capitalistic production are highly inefficient because, as respects the great body of laborers, they are so coercive. Efficiency requires methods which will enlist greater individual interest and attention, greater emotional and intellectual liberty. With respect to such a liberation of energies, older and coarser forms of liberty may be obstruct-

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ive; efficiency may then require the use of coercive power to abrogate *their* exercise.

The propositions of this paper may then be summed up as follows: First, since the attainment of ends requires the use of means, law is essentially a formulation of the use of force. Secondly, the only question which can be raised about the justification of force is that of comparative efficiency and economy in its use. Thirdly, what is justly objected to as violence or undue coercion is a reliance upon wasteful and destructful means of accomplishing results. Fourthly, there is always a possibility that what passes as a legitimate use of force may be so wasteful as to be really a use of violence; and *per contra* that measures condemned as recourse to mere violence may, under the given circumstances, represent an intelligent utilization of energy. In no case, can antecedent or *a priori* principles be appealed to as more than presumptive: the point at issue is concrete utilization of means for ends.

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THE DOCILITY OF THE FIGHTER.

GEORGE MALCOLM STRATTON.

IN SPEAKING with thoughtful men concerning the present war, one hears of the place which fighting holds in human nature. War it is said is bred into men, never to be removed, part of their blood and bone and marrow. And such a creed is widespread, in books and in the living words of those who are far from cynical. Among my neighbors are men of outlook and generous impulse, yet one of them believes that human nature is essentially homicidal, and that any who are unwilling to accept war, which is the expression of this nature, must seek an abode upon some other planet. Another friend, holding with Hobbes that the compelling power of life is selfishness, believes that nations, driven as they forever are by this spirit, can be met and held only by force of arms. War, then, must be looked upon leniently, even in our abhorrence, as the appropriate utterance of an instinct whose fibres reach into the very heart and are not to be touched by drug or surgery. Such are the convictions of men versed in the world's life, candid, willing to face unflattering truth, asking that in equal candor we judge the conduct of nations by the grim standard of reality.

One might give even a juster view of the springs of human conduct without changing their conclusion, save to strengthen it. For fighting is indeed an instinct bred in by milleniums of savage ancestry and by an endless brute inheritance beyond, and it is still sustained in many ways. Not only is the fighting-spirit seconded by greed, but often no external object of desire—no ponderable good to be gained—is in mind, and men fight in a red and improvident anger, as well as from the sheer lust of conflict, feeling toward their destructive effort something of an artist's love of art for art's sake. Sober human nature

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itself and not a satirist sketched that early ideal of bliss in Valhalla, where, with inexhaustible mead and boar's flesh, men might enjoy a stout daily clash.

But the war-spirit is nursed by feelings that are still farther removed from all that is covetous. Men fight not only for love of fighting, and for love of self, but for love of others. Chivalry joins with cupidity to preserve and spur the fighting instinct. Men go to war, not from ungovernable self-will alone, but because they have merged their wills with others, and forgetting all personal gain—nay, ungrudgingly making sacrifice of all they value most—rush to protect or to further the great institution that is the mother of them all.

Thus a less sordid view of human nature, with full acceptance of its generous strain, seems to find war doubly and trebly entrenched—entrenched behind greed, behind the love of risk and tense adventure, behind loyalty. And therefore is not the effort to destroy it, or even to drive it back and make this world, if not a peaceable, yet a less quarrelsome place, foredoomed to failure? Is not war's very nobility, its contempt for petty prudence, its glowing fusion with conscience and aspiration—which has long made it the symbol of all high endeavor—does not all this give war an equal place with Andes and with Ararat?

Massive as such an argument might become, deep as is its sounding of the human heart, a more careful survey shows that it cannot stand. The hope, rising into confidence with some, that the attack upon war is not a futile thing—not like preaching to earthquake or tornado—this hope may be rebuked, but surely not by the facts of human nature taken more near their full. May we then for the time neglect all else—neglect all difficulties of education, of organizing, of administering, of profit and loss, which indeed are great and many—and consider only those difficulties that are supposed to be central, lying in instinct and in what is regarded as the inalterable constitution of the mind. Nor need one's thought in such a survey thin out to subtlety and abstraction, but rather find

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its index to human nature in the rounded facts of man's conduct in shop and street and camp.

And so beginning our survey, we observe at once that in all the more civilized parts of the entire world the individual has been schooled to control his fighting instinct. In the infinite network of irritating conditions in which we personally move—rights pressing hard upon rights, lust having perpetually to see and forego its object, greed eyeing open possessions everywhere, pride daily wounded and resentful—in the midst of these that are as bugles to the fighting impulse, our normal citizen lives without assault. The inner, and in a measure the outer, workings of contention still are there: he may show jealousy, anger, a sour and settled malice; he may at times be subtle, tart of tongue, litigious; but with it all he has himself so far under control that he makes no bodily onslaught. He is converted to a really civilized warfare, in which he discards not merely dumdum bullets, but all bullets, all means of ripping soul from body; refraining not only from mutilating the dead but from mutilating the living; using the weapons of rebuke, persuasion, public opinion, and, when all these fail, of police and court impartial to his separate and particular good. What his schooling has done for him, what changes it has wrought in the inner machinery that controls his outward conduct, is shown by the contrast between him and the men who have early left or have never entered his school, or by exception have been resistant to its influence—the savage, the criminal, the brawler in the frontier saloon. Whatever we may hold as to the depth or permanence of this change, his conduct has undergone a transformation. A violent and instinctive mode of expressing his emotions has been brought to bay; the instinct has not been killed, but has been bound over to keep the peace. And yet after childhood, and for all who are not exceptionally intractable, the forces that check and redirect his physical conduct are themselves not physical. Whether the forces come from within or from without, whether they be of self-control, or of control by

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the expectation, the approval, the censure of others, they exert a wholly immaterial compulsion. Otherwise our estate would indeed be dark; more than half our population would be needed to suppress the rest; and a still larger force, brought from heaven-knows-where, would be needed to control the controllers; and so on without end. The instinctive combativeness of the individual has thus experienced a profound alteration.

Nor has the change been confined wholly to the person; for it has spread over many an organization that once was of chronic and infectious pugnacity. Thus the family, the clan, the tribe, were at one time fighting units, of pacific influence inward, but outward all bristling for the fray. Tribe fought tribe in Arabia, until Mohammed gave them a common creed and government. Montague kept peace with Montague, but bit thumb and drew on any Capulet. And the feuds that still sound faintly from the mountains of our South are present echoes of this ancient faith.

This conversion of corporate life, whereby the peace that looked wholly toward its own members came later to face toward bodies without, is shown also in the older cities. The boys of the "auld toon" in Edinburgh having bloody "bicker" with those of the new, shows as in parody an early state. Quarter gives battle to quarter, wherein neighborhood often is strengthened by ties of blood, as in Syrian towns of our day. But not only has some organized part of the city waged war on other parts, but the city as a whole has fought with other cities, Athens against Sparta, Florence against Pisa, until these local rivalries came no longer to open broil. Thus the trend has been to sweep war out to an ever more distant border—from the quarter of the town to the town wall, from the town wall to the border of some petty kingdom, from the petty kingdom out to the boundary of some enormous empire. The British Isles, Germany, Italy, France—each has at some time been a mere aggregation of Balkan-like states persistently at one another's throat. Four centuries ago, Minneapolis

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would have waged war on St. Paul, Baltimore on Washington; Massachusetts would be descending by land and sea upon Connecticut; California would consist of a dozen turbulent kingdoms. The states of our nation still have local pride and loyalty; they can upon occasion show resentment toward others of the family; the old phrase "this sovereign state" is mouthed defiantly; but all these things have lost their physical meaning, they do not imply banner and battle-axe and dismembered bodies. Our country's imperial area has been swept clear of all probability of armed conflict, as has that other area held by England, Scotland, Canada, New Zealand, and Australia. Each member of this wonderful group of nations that go to make up the British Empire has not only cleared its own bounds of strife, but is pacific outward in its conduct toward its fellows of the league. Over a region upon which the sun never sets, the fighting instinct lies like a paralytic, its sinews all unstrung by some hidden force.

Two truths thus become clear regarding combat, truths of moment. The first is, that while combat springs from an instinct of measureless antiquity, and perhaps never to be regarded dead, never impossible to rouse to fury; yet in a form of society that is widespread the instinct in all individual relations has been put under bonds. The victory here is greater than appears. For when another eyes us face to face, this is for most of us the one most critical of situations. Our instinctive and undisciplined character now feels a strain and stimulus that never can normally come from a stranger miles away. The actual confronting sets nature in motion, and makes possible some crisis of pity or of hatred that the mere rumor of him and of what he in the distance is doing to other distant men is powerless to effect. Emerson would have been willing to have the outcome of some Roman campaign reversed to set aright the answer of a school-girl in his presence, such is the force of this direct relationship. Yet in these immediate and personal situations, with their power to call forth antipathy, the human passions with most of us are so muzzled and in leash that they may growl but cannot

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spring and crunch. Two Germans glaring at each other in a Leipzig alley, incensed at some unneighborly intrusion, or a chance word about a wife, are in a situation that speaks directly to the primal instinct. Yet they keep the peace, only to join in a homicidal rage against a stranger, upon occasion of a courteous but unsatisfactory reply from some Russian or Frenchman leagues away, addressed to a gentleman in Berlin whose name at the moment has escaped them or whom from rumor they personally dislike. What hot-house trick of breeding has here been forced upon the mind; what clear departure from all that it shows by native disposition! The citizen's fighting-blood runs hot or cold at a nod from an official in a revolving chair. What could display more perfect control and schooling!

Indeed the more perfect the machinery of governmental fighting, the more completely must the individual surrender his will, his resentments, into the hand of others. The more he serves in barracks and in camp, the more must drill and discipline drive whimpering into some corner of his being whatever original and instinctive pugnacity yet remains. Without a word—not to speak of protest with fist or murderous weapon there in his hand—he must brook official severity that is often insolent. Thus in the soldier, even more than in the civilian, has instinct been given bit and bridle.

The other truth concerns the fighting response, not of the individual but of organizations. For it has been said that you may control men singly, but men in masses are not to be controlled. Here the slumbering passions of our nature awaken to stalk forth blear-eyed, obeying no longer the laws of the individual mind, but only those of the mob.

Yet we have seen organizations of men converted after the manner of individuals. The old allegiance to family and clan and tribe, to city and shire and state and petty lord, which once seemed incurably given over to armed animosity and assault, has throughout widest realms been schooled to some other manner of expression. The circles within which an organization might not attack its fellows

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have steadily enlarged while becoming fewer in number. These larger fighting units, like individuals, must never assault except when the nation gives the word.

In the fact of organization, consequently, there is nothing that makes inevitably for homicide. At first by force, but later by habit and free preference, the family, the tribe, the city, the constituent state, have carried into their outward relations the same pacific manner which formerly they had reserved for those within.

If war, then, is to abide with us forever, this will not be because of an instinct which never can be controlled. The fighting instinct is controllable, and indeed has been controlled in all manner of situations save those of a special kind, where at their surface nation rubs against nation. Here as yet there has been installed no proper means of cooling and prevention; and heat develops, and a molten burst of flame. But it is idle to say that human nature makes this forever unavoidable. Let us with more temperance say that it has not as yet been avoided. For in its fighting, human nature has shown itself singularly responsive to training good or bad—ready to fight if left to its own undisciplined impulses, ready to fight also when combat is the order of the day and is expected; but ready to live at peace if peace has been drilled into thought and habit.

Those of more subtle bent, or who—as the Bishop of Cloyne would say—have been debauched with learning, will here turn and rend us, saying that any discipline which makes man peaceable does not affect his real nature, but only its outward expression. At heart he still is ravening; you have but to change his circumstance, but to remove the artificial conditions, and up into his eye comes the old murderous look.

So let it be for the moment, since it leaves undenied the vital fact. Let it be that our "real nature" is what we have by mere private physiology, without co-operative effort, and apart from institutions—what each would be were he suckled by a wolf and cast forth without learning even the law of the pack. And let all civilization be but

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artificial, something into which human nature has been shaped by influences from without. Yet the practical question is not whether war as we now have it, frequent and stupendous and central, is inevitable in some "natural" and wolfish state; but whether it is inevitable in a state of civilization such as ours of to-day and to-morrow and of the long stretch to come; inevitable when human nature, define it as you will, is hedged about by institutions, and a common desire, and an organized effort. I do not know that those who strive for peace would refuse to accept it, were it a result not of nature but of art. The quickening truth would be that human nature, brutish as you will, cannot make impossible so fair an issue.

But what in justice should we say of this strange core of us? Must we recognize that what we really are is only the tiger and the ape? I am ready to look at human nature sitting with stone club in some bone-strewn cave, and to find a deep import in its rude drawings scratched on the cavern's wall. But I see no reason why such documents should have sole and canonical authority; why the nature so revealed should in some pre-eminent sense be regarded as his "real" nature. If we hesitate to give equal weight to the clear sight of human nature in the rare spirits of past and present, may we not at least use as evidence our average citizen in tweed, who pays his debts, and runs his own second-hand typewriter above which hangs the face of Abraham Lincoln? Shall we not find a revelation of human nature in whatever human nature accomplishes? Humanity can suck marrow out of an uncooked bear's bone crushed with a rock, but also it can with toil and sad patience express its dissatisfaction with this kind of life. Out of the springs of its own nature it can draw the means to control its nature; and the success in so controlling reveals the inner reality as truly as do the ungoverned impulses that need control. Civilization is not something imposed by an outside influence upon human nature; it is an expression, a revelation, of human nature, showing what man can do with his unpromising self. By its own inventiveness and self-discipline, by its own cumulative and

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co-operative use of an abundant inner and outer means, humanity shows the stuff of which it is made.

The nature so revealed—ready both to command and to obey, amazingly educable for war as well as for peace, but steadily enlarging the bounds within which onslaught may not be—such a nature cannot be pointed to as an insuperable and permanent obstacle to a better ordering of the world. The demand for the control of war is modest; few would clamor for perfection over night. But it does seem compatible with human nature, that when intelligence and planning and discipline have done their work, war should figure in the daily life of our leading nations much as does the possibility of assault in the mind of the average New-Yorker. He knows that he can have an encounter if he wishes; he knows that fighting occurs daily in back streets; but he himself is not busied every moment of his day with large planning for attack and defense. Yet in such a city human nature somehow gets along with human nature of every tint and shade of knowledge and creed and politics and race and tongue; and with no government descended direct from heaven, but rather with a sorry human instrument with which men bungle on to success.

The difficulty of a like change in the life of nations is great; there will be need of intelligence, inventiveness, patience and impatience, coolness and daring. The task will be arduous enough, even without imagining obstacles. For it *is* an imaginary obstacle, that the human heart is pledged and by its very essence forever fated to an unbridled lust for the blood of the alien; that it will forever lay down its life for certain strangers, and yet deliberately slaughter other strangers, just because somewhere between the groups there runs an artificial administrative line. The task is indeed great, but in the past such tasks have served as a challenge, and the will of man in the presence of difficulty is imaginative and indomitable.

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ON THE FUNCTION OF FALSE HYPOTHESES IN ETHICS.

C. D. BROAD.

THE title of this paper is obscure, but the question which it proposes to discuss is important; it is closely connected with an ethical principle which is perhaps more often explicitly used in the reasonings of daily life than any other. This principle or mode of argument I call the *Principle of False Universalisation.*

A man proposes to himself a certain course of action and debates whether it be right or wrong. At a certain stage he will say to himself, or, if he be discussing the matter with a friend, his friend will say: Suppose *everybody* did what you propose to do. The consequences of this hypothesis will then be considered, and, if they be found to be bad, the man will generally consider that this fact tends to prove that his proposed action is wrong. I think the principle is nearly always used negatively, *i.e.*, to condemn a proposed course of action. We do not in general argue that a proposed action must be right because if everybody did likewise the result would be excellent. How far there is anything to be said for this distinction we may see in the course of our discussion.

Everybody is familiar with this kind of reasoning; everybody seems to think that it is valid and important; and, as we know, something very like it was regarded by Kant as *the* fundamental law of ethics. Yet people have not noticed how extremely paradoxical it is, and what curious and interesting questions it raises on the border line between ethics and logic. The paradox is this. We are asked to believe that the rightness or wrongness of many of our actions depends on the probable consequences, not of what we judge to be true, but of what we know to be false. For, in practically every case where we consider what would happen if everybody acted as we propose to

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act, we know as surely as we can know anything that is not *a priori*, that by no means everybody will act this way. *E.g.*, a man says: I should intensely dislike to be married and don't intend to marry. His friend replies: But suppose everybody refused to marry, would not the results be very bad? If the man agrees that the results would be very bad he will be inclined to think that this is *pro tanto* an argument against the rightness of his refusal to marry. Yet both he and his friend are perfectly well aware that the hypothesis which they are supposing is false; they know quite well that as a matter of fact there is not the least prospect of everybody refusing to marry or even of so many people remaining unmarried as to lead to the consequences which they agree would be bad if they actually existed.

It might of course be said that the paradox only arises when you consider that the rightness or wrongness of actions depends on their actual or probable consequences, and that it is avoided if you suppose that it depends wholly on their own intrinsic qualities. So long as we believe that probable consequences are relevant in deciding the rightness or wrongness of an action, the particular circumstances under which the action is to be performed must be taken into account, since its probable consequence will largely be determined by them. And a very important circumstance must be the question whether other people are or are not going to do similar actions. Hence, if probable consequences are to be considered at all, we cannot and ought not to be guided by a false account of the circumstances; and the hypothesis whose consequence we are asked to consider in the method of false universalisation is admittedly a false account of the circumstances in which our proposed action would take place. If we had only to consider the intrinsic quality of the action this difficulty would vanish. For, since we are not to consider circumstances at all, the mere fact that the universalisation gives a false account of them need not trouble us. But, as against this, two things must be said: (1) It is thoroughly

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unreasonable to suppose that the goodness or badness of an action is entirely independent of its probable consequences, and no one but a moralist riding a theory to death would maintain this view for an instant. (2) Such a view can hardly be held consistently by persons who support the method of false universalisation. For they are admittedly asking us to consider and appraise consequences; and they can hardly take up the extraordinary position that it is only the consequences of what we know to be false that are ethically relevant, while the consequences of what we believe to be true are wholly unimportant.

And, as a matter of fact, except in the case of false universalisation, it would commonly be held that it is only the probable consequence of what is believed to be true that is ethically relevant. To be guided by the probable consequences of what is known to be false would, in most cases, be regarded as absurd and immoral. A man who proposed to establish a system of communism would not be held to have justified himself if he merely said: Consider how excellent the consequences of my system would be if no one were guided by selfish motives. Yet the hypothesis that no one is guided by selfish motives is not more obviously false than the hypothesis that no one is prepared to marry. But, seemingly, the admitted falsity of the former hypothesis makes its consequences ethically irrelevant, while the admitted falsity of the latter does not. There is a real paradox here, and it leads us to the general question: Is the goodness or badness of the consequences of admittedly false hypotheses ever relevant in deciding rightness or wrongness of a course of action; and, if so, what is the distinction between those false hypotheses whose probable consequences are relevant and those whose probable consequences are not?

We may usefully begin by considering cases where the employment of false hypotheses is obviously justifiable, and gradually working up to the more difficult and paradoxical examples of its use which we have just been illustrating. The first and simplest use is for the avoidance of personal

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prejudice. We feel inclined to perform a certain action and are not sure whether it is right. We then say: Suppose Smith were in my circumstances and did the action that I propose to do, what should I think of him? If, when we try to envisage this false hypothesis, we find that we should strongly condemn it, we may be fairly sure that our own proposed action is wrong and that our tendency to approve it in ourselves is due to mere personal prejudice. This obviously justifiable and extremely useful employment of false hypothesis raises no theoretical difficulties. We are not supposing that our act takes place under circumstances different from the actual in any relevant respect; we are supposing that its consequences are the same and that the only difference in circumstances is that it is performed by Smith and not by me. And it is essential that no other differences should be introduced. If I introduce considerations about Smith's particular situation, or consider any difference between him and me other than the fact that he differs numerically from me, my judgment based on contemplating his action can no longer be applied straightway to mine. And the reason is that the action will now have been performed under different circumstances and will therefore probably have different consequences from my own proposed act. If the question is: Ought I to buy a motor-car? and I find nothing to disapprove when I contemplate the hypothesis of Smith buying a motor-car, this will have no bearing on the rightness of my proposed action if one of the differences that I have taken into consideration is that Smith's income is twice mine. The essential limitations then of this use of false hypotheses are such that it throws no light on the question of false universalisation; for it differs just in the circumstances which make false universalisation so paradoxical.

Another use of false hypothesis is where we decide on the right course of action by considering what somebody whose moral character we admire would probably do if placed in our position, *e.g.*, some evangelical Christians

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claim to solve moral problems by considering: "What would Jesus do?" No special logical difficulty is involved here, and the method is simply of the following type: I cannot see by direct inspection or by reasoning what is the right course of action here. I can be sure that if Jesus were in my situation His action would be the right one, and I am well enough acquainted with the character of Jesus to be tolerably certain what course of action He would take. I shall therefore be safe in following that course of action. Whatever we may think of the practicability of such a method, there is nothing recondite in it; it is of the same logical type as looking up a recipe in cookery book fortified by the knowledge that Mrs. Beeton was a better cook than I am. We are not, as in the method of false universalisation, considering the results of an action done under circumstances that we know not to exist. We suppose that Jesus is in exactly the same position as we are and make abstraction of all differences between Him and us except the difference that He knows what is right and will certainly do it, while we are weak in insight and in performance. If we take into account other differences, we cannot reasonably argue from what Jesus would do to the rightness of a similar action on our part. A being who could raise the dead would *e.g.* be justified in performing certain operations for which a human doctor could justly be blamed. It is perhaps worth while to notice that these considerations wreck the method in practice. To obtain useful ethical conclusions about our own actions, we need to regard Jesus simply as differing from us in insight and good-will. But, to obtain conclusions as to His probable course of action in given circumstances, we must argue inductively from what we know about His recorded actions; and these are the actions of a being differing from us in innumerable other respects beside the two mentioned.

These two examples of false hypothesis then throw very little light on the particular problem that interests us, viz., that of false universalisation. But we can now pass

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to certain genuine cases of false universalisation where the logical principles involved are easy to recognize. We will discuss these before passing to the most difficult and paradoxical uses of this principle. The use that we have now to consider may be described as the use of the principle of false generalisation as a moral microscope.

The result of one man's action may be very small, and it may be impossible for him to see by contemplating it alone whether it be good, bad, or indifferent. But he may be able to see that a great number of such actions would produce a result of the same kind as a single one but of much greater magnitude, and that this result would be unmistakably good or bad. If he has reason to suppose that the goodness or badness of the results of a large number of similar actions is the sum of the goodness or badness of the results of the separate actions, he will be able to conclude as to the moral quality of his own proposed action though it was not obvious on mere inspection. It is clear that if such an argument be ever applicable, the falsity of the hypothesis is irrelevant. We are admittedly capable of estimating the goodness or badness of merely hypothetical states of affairs. This being granted, the general line of argument runs as follows: If the complex C existed it would be good (or bad). Now the complex C contains a part *c* precisely similar to the results of a certain contemplated action. We have reason to believe that C could not be good (or bad) unless *c* were itself good (or bad). Hence we can come to a conclusion about the moral quality of our proposed action even though this be too small to reveal itself to mere inspection.

The nerve of the argument obviously is the condition that a complex shall be known to be so related to one of its parts that the former cannot be good (or bad) unless the latter has the corresponding moral predicate. Unfortunately, the principle of organic unities makes it extremely difficult to be certain in any particular case that this relation subsists between the value of a whole and that of one of its parts. It seems most plausible to suppose

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that this relation holds for those complexes which consist of a number of precisely similar parts. And these are the cases contemplated when the principle of false universalisation is used as a moral microscope. The appeal to everybody is here, strictly speaking, rhetorical; all that is really necessary is to consider the results of a fairly large number of people performing actions precisely like the one under discussion. And the argument, if *ever* valid, is subject to great limitation and doubt. We must take the results of our act quite in abstraction before hypothetically multiplying them, and this is liable to be overlooked if we bring in the notion of other agents performing precisely similar acts. To take a typical instance. I walk through a field and pluck an ear of corn. Is this right, wrong or indifferent? If I now say: Suppose a million people walked through and each plucked an ear, the results would be very bad, I must of course make abstraction of the effects of a million people merely walking through. My walking through may have done no damage whatever, but it would be physically impossible for a million people to walk through without doing grave damage. It is better, therefore, not merely to drop the reference to everybody, but also to drop the reference to agents altogether and to consider nothing but the hypothetical multiplication of results like the result of my action.

But, even when this is done, it seems to me that the argument from the damage done by a million ears being plucked to that done by the plucking of one is most precarious. The consequences that have to be considered cannot be the mere separation of the ears from the stalk; this, like all physical events, is in itself morally indifferent. We obviously have to go further and consider the effects on the state of mind of the owner of the field and of others. Now it seems perfectly possible that no one's state of mind is in the least better or worse for the plucking of one ear and yet that it may be very much the worse for the plucking of a million. There is absolutely no logical reason against this and it seems to me to be true. The most

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probable account of the matter is that the plucking of a certain finite number n (varying of course with the circumstances) is absolutely indifferent, while the plucking of any greater number leads to consequences which get worse as the number gets greater. It is no objection to this view that we cannot state exactly what the number n is; for it is no objection to any theory that it does not presuppose omniscience in its supporters. I think we may put the objection to the moral microscope as follows: If you merely consider physical consequences, they have no moral value and therefore cannot help you to decide any moral question. If you go on to consider psychical consequences, then there seems hardly any reason to believe that the psychical consequences of a large number of precisely similar physical events form a whole consisting of a number of similar parts and itself similar to its parts, or a state differing *only* in magnitude from that produced by each physical event separately. And it is not at all clear to me that if two psychical states differ only in their intensive magnitude and the one with the greater intensive magnitude be good (or bad) the one with the less intensive magnitude must have the same ethical quality but to a smaller degree.

I conclude then that both on practical and ethical grounds it is most unlikely that you can ever safely argue from the goodness or badness of the effect of a number of precisely similar acts to the rightness or wrongness of a single act of the class. And, unless this can be done, the moral microscope can have no valid practical use.

But we now come to a class of cases where the principle is used, but where the moral microscope explanation, even if it be valid, can hardly be the full explanation. And these are just the most paradoxical and perhaps the commonest instances of the use of the principle of false universalisation. The cases that we have to consider are the following: A certain good can only be produced by the co-operation of a number of people. The acts of these people need not, of course, and in general will not be *precisely* similar; all that is important is that they resemble

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each other in the fact of co-operating to this end. The use of the principle that we have now to consider is to prove to people that they ought to co-operate. A man is supposed to admit that the results obtained by the action of a certain group are good, and that they can only be obtained by co-operation. He refuses, however, to co-operate. People then say: But suppose everybody refused to co-operate, this good would be unobtainable. The refuser will generally be inclined to admit that this is a powerful argument against the rightness of his refusal. We may note further that this line of argument is only employed as a rule when the part contributed to the whole good by each member of the group is very small. We can reinforce this point by a negative instance. Suppose my friend discusses with me the propriety of murdering his wealthy uncle Joseph who has remembered him in his will. Unless I am a Kantian or suspect my friend of being one, I shall not consider it appropriate to point out to him that, if everyone murdered his wealthy uncle from whom he had expectations, a deplorable insecurity would prevail among a deserving class of men and an excuse would be provided for them to leave their money to missionary societies.[1] I should rather insist on the loss of well-being to Uncle Joseph himself, and the probable detection and execution of my friend without the enjoyment of his legacy. And this is because the murder of Uncle Joseph would be in itself an act fraught with appreciably evil consequences, and because for considerable evil to be wrought in this direction the co-operation of many uncle-murderers is not essential.

This fact that the argument is only used where the contribution of each member of the group is necessarily small suggests that the moral microscope plays at any rate some part in these instances. An abstention from joining a group is of course from an ethical point of view just as much an action as joining it. And it may be said that the argument is to show that A's abstention must be wrong though its badness is not obvious on inspection, because a

[1] Though of course a strict Kantian could not use even as suitable an argument as this.

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large number of precisely similar abstentions would have admittedly bad results.

But it is surely easy to see that this argument is here a very feeble one. It is quite true that A's abstention *would* have bad consequences if it took place together with the abstention of a great many other people. But it does not in the least follow that it *will* have any bad consequences if it take place together with but few other abstentions. Now in judging of the rightness or wrongness of a proposed action it is admitted that we ought in general to take into account the circumstances under which it is to be performed. If a doctor is considering whether he ought to administer chloroform to a patient, it is his duty to consider the particular state of that particular patient's heart, and he will justly be blamed if he omits to do so. Similarly it is impossible to see why A should not have the right and indeed the duty to consider the actual fact that most people have joined the group when he debates on the rightness or wrongness of his joining. It is in fact easy to produce cases where refusal to consider the actual facts about the number of people who have joined will apparently lead A to make a wrong decision. Let us suppose that a group G is co-operating to produce a certain result. Let us suppose that n people have joined the group and let us further suppose that, however great n may be, the joining of the group by an $n+1$th individuals entails certain sacrifices on him. It is probably reasonable to suppose (a) that the sacrifices made by each individual are lessened as the number of members increases but that the rate of decrease diminishes as n grows greater; (b) that the amount of good produced by the group (apart from the sacrifices) increases as n increases, but that after a certain point the rate of increase diminishes as n grows greater.[2] If now we call $s(n)$ the

[2] This hypothesis is unduly favorable to the argument which we are criticising. There are many groups where efficiency would after a certain point continually diminish as n increased. *E.g.*, our drains would be less well cleaned if millions of people were persuaded by the principle of false universalisation to join the group of drain-cleaners. And this would follow from the mere undue increase of numbers in the group, quite apart from the other obvious loss to the general good by this withdrawal from their other occupations.

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total sacrifices made where there are n members and $g(n)$ the total good produced by their efforts (apart from the sacrifices) it is quite likely that a point will be reached where

$$g(n+1)-s(n+1)<g(n)-s(n)$$

When this point is reached it would seem to be the duty of people to refuse to join the group, and if they let themselves be guided by the mere fact that $g(0)=0$ and decide to join, they will presumably decide wrongly. Here again the fact that n cannot exactly be determined is merely of practical interest; probably in most cases upper and lower limits could be given for it. We see then that if moral microscopic considerations be the only ones involved in these applications of the principle of false universalisation there is no reason to suppose that the argument to the action of any given person is *ever* valid, and strong reason to believe that after a certain point it will lead to wrong decisions. And in actual fact we notice that the moral microscope is not the main use of the principle in these examples. Suppose that A is told that he ought to co-operate with a certain group because he approves of the end that can be obtained by their efforts, and is reminded that if everybody refused to co-operate the end could not be obtained. If he replies that the end will be obtained whether he co-operates or not and that therefore the hypothesis is as idle as the hypothesis that the moon is made of green cheese, the reply will probably be: But is it fair that other people should do all the work and that you should share in the profits? This seems to be the natural development of the argument from false universalisation in the examples that we are considering where it is clear that the moral microscope is an insufficient explanation. Let us consider it as carefully as possible.

The argument, I think, runs somewhat as follows. You admit that a certain good result can only be obtained by the co-operation of a number of people. Further, this co-operation involves certain sacrifices on the part of all the co-operators. Lastly, the good aimed at is one which,

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from the nature of the case, must be enjoyed by all the members of a certain class whether this class be identified with the group of producers or not. The enjoyers may not all be producers and the producers may not all be enjoyers. *E.g.*, if any good results come to the victors in a war they will be of such a kind—national prosperity, feeling of national pride, etc.—that they will *ipso facto* be enjoyed by many members of the victorious nation independently of whether they helped to produce them or not. On the other hand, it is quite certain that many of the producers cannot be enjoyers, because they will be dead or injured for life. A feeling of national pride is *e.g.* a very poor compensation for the loss of both eyes and a leg. Now it may be true that just the same good will be produced whether you co-operate or not, but there is no relevant difference between you and those who join which entitles you to the halfpence without the kicks and them to the certainty of kicks and the possibility of no halfpence.

In fact the argument turns upon distribution. What I mean is this. The possession of certain things and the existence of certain states of mind is intrinsically good. And it is the duty of everyone to aim at what he believes will be the best possible state of affairs on the whole. But the goodness or badness of a complex state of affairs is not a function merely of the goodness or badness of its parts. A certain set of goods distributed in one way between a number of people may constitute an intrinsically better state of affairs than the same set distributed differently. And the appeal to "fairness" seems to rest on the principle that the best possible state of affairs is reached when the group of producers and that of enjoyers is as nearly identical as possible. In fact common-sense would probably go further than this and say that the best possible result was reached when (a) producers and enjoyers are identical and (b) the share in the good produced that falls to each producer is proportional to his sacrifice in producing them. So the argument from fairness really is that the group of producers and the group of enjoyers have no *a priori* or

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natural identity; that it is morally desirable that they should be as nearly identical as possible; and that the only way to secure this is for all enjoyers so far as possible to become producers, even though the total product is not thereby increased.

This argument sounds plausible, and I believe that it is in some sense true. But it contains a number of unanalysed difficulties, and it is important to try and determine its limitations. At the very outset a serious difficulty meets us. We have seen that it is almost certain that a point will be reached where, if we disregard questions of distribution, the extra sacrifice due to an additional member joining the group will more than counterbalance the extra benefit due to his action. When we take distribution into account we can see that this limit may very well need to be overstepped in some measure; we can even see that a better total state may be produced by a smaller amount of goods better distributed than by a larger amount worse distributed. But it seems very difficult to deny that there may be a limit beyond which good distribution is too dearly purchased. I imagine that the remark *fiat justitia ruat cœlum* would be the denial of this possibility. But I am not sure that anyone would maintain this maxim unless he felt confident that the world is so constituted that the heavens never will fall if justice be done. Now, whether this confidence be justified or not—I myself see no justification for it—it is a metaphysical proposition and not a proposition of pure ethics. We must therefore, I think, be prepared to admit in theory that there may come a point where it is better that some people should refuse to co-operate although this involves an imperfect distribution, than that they should by co-operating produce a much smaller net-balance of goods though perfectly distributed. Once more it is no objection to say that it is totally impossible to determine exactly where this point comes in any particular case. This is quite true, but it is too common a difficulty in ethics to worry us, and we know that we are lucky in ethical questions if we can state upper and

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lower limits that are not too ridiculously far apart. Where right ends and wrong begins between these limits, it is utterly impossible to say.

We may now ask ourselves the question: Is there any necessary connexion between the method of false universalisation and the argument from fairness? We have indeed seen that the former tends to pass into the latter when its more obvious incoherences are pointed out, but *need* we pass to the argument from fairness by way of the argument from false universalisation? I think we may say that, so far as we have yet dealt with the argument from fairness, it has no logical connexion whatever with the argument from false universalization. The only connexion is that both arguments attempt to show that everyone in a certain group should join a certain other group. The argument from false universalisation does this by pointing to the evil consequences of no one joining this group, and it is of course a necessary step in the argument from fairness that it shall be admitted that certain good will result if this group be formed and will not result if it be not formed. But this is the only use that the argument from fairness makes of the argument from false universalisation; it merely takes over one of the premises of that argument. Its own peculiarity is that it supplies two further premises, one factual and one ethical, which the argument from false generalisation does not use. These are (a) the factual premise that the goods are of such a kind that they must be enjoyed by a group not necessarily identical with the group of producers and (b) that the best distribution is one in which the producers and enjoyers of a certain good are identical.

We must now notice a special difficulty which affects the argument from false generalisation. Let A and B be two groups each enjoying a certain good. Let the sole threat to A's good be the existence of a subgroup β in B and the sole threat to B's good be the existence of a subgroup α in A. (*E.g.*, let the good be national prosperity. A and B are two prosperous nations, and the prosperity of A is only

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threatened by the armed forces (β) of B, while the prosperity of B is only threatened by the armed forces (α) of A.) A citizen of A refuses to join his army and is told that if everyone did as he proposes to do the prosperity of A will be lost. But this depends on whether he means: I don't intend to join the army of A or I don't intend to join the army of A or of B. If he means the latter, it is clear that the very best results would follow if everyone followed his example, for then both A and B would necessarily retain their prosperity. And if the employer of the argument from false universalisation appeals to the fact that other people certainly will join B's army he is (a) contradicting his own hypothetical premises and (b) laying himself open to the retort that other people will also certainly join A's army. Since it may fairly be assumed that a person who refuses to join his own army intends *ipso facto* to refuse to join any other, his position is absolutely unassailable by the weapon of false universalisation alone. But it is clear that the argument from fairness, if it applies at all, would apply here, too; and therefore we can reinforce our conclusion that there is no essential connexion between the two arguments.

Is there then no valid use for the principle of false universalisation in ethics? I think there is at least one, though it is a very modest one. It can be used to refute a certain kind of mistaken judgment about the rightness of a suggested act. Suppose that certain acts are very unpleasant to everyone and entail very real sacrifices from which everyone shrinks. Suppose further that the performance of such acts by a certain number of persons is essential to the attainment of a considerable good or the avoidance of a considerable evil. If now a man says: I will not act thus *because* I dislike the sacrifice then it is open to us to point out to him that, if this be his sole ground, it is just as valid a ground for all other people, since by hypotheses they all dislike the sacrifice. If then he is right in refusing to do the act, all other people will also be right in refusing on the same ground. But the result will be that a great good will be lost or a great evil suffered.

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Now it cannot be the case that the result of a number of right actions can be a state of affairs which can be foreseen to be worse than if people had acted differently. Hence we can conclude that these actions could not all be right. But if his ground for supposing that *his* action was right were valid all these actions would be right. We therefore are forced to conclude, not that his action was wrong (for that does not follow at all), but that at any rate his reasons for supposing it to be right were unsound.

We must now notice the extreme limitations of this use of the principle. (1) It does not prove that *all* the people who abstained acted wrongly; it only proves that some acted wrongly and it offers us no means of deciding which. To decide which one acted wrongly we should have to consider the details of each man and the circumstances under which he made his decision. To decide whether *all* acted wrongly we should have to introduce the principle of fairness, and, as we have seen, it does not necessarily follow from this that all who abstained must have acted wrongly. (2) The argument only holds where the dislike of the sacrifice may be assumed to be nearly equal in everybody. If a man refused to marry because he strongly disliked the idea of marriage you could not prove him to be wrong by the principle of false universalisation; for he might justly say that most other people do not dislike marriage so strongly as he does and therefore his objection could not be universalised. Other people whose dislike was weaker or non-existent could have no ground to conclude that an abstention in them would be right because an abstention in him was right. (3) This brings us to an exceedingly difficult point where even this modest use of the principle threatens to be wrecked. Suppose the dislike of a sacrifice were about equally strong in everyone. We must admit that some people succeed much better than others in overcoming such dislikes from a sense of duty and other motives. Might not a man argue thus? I am not going to do this action because I dislike it and my dislike is stronger than my sense of duty. But this does not

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prove that it will be right for others to abstain who have the same dislike but a stronger sense of duty. Hence there is no contradiction between my judgment: This abstention is right in me with my weak sense of duty, and the fact that if all other people whose dislike of the sacrifice is as great as mine were to abstain a great good would be lost or evil produced. For if other people accept my principle it will only justify them in abstaining provided their sense of duty is as weak as mine; and this by hypothesis is not the case. The fact is that you cannot disprove by the method of false universalisation the judgment: My sense of duty is so weak compared with my dislike of the necessary sacrifices that I do right in abstaining from the action.

Indeed, paradoxical as such a judgment seems and greatly as it might be abused, it is not in general refutable. In the first place you certainly cannot say that the actual strength of my desire to do what I believe to be right is *never* a relevant factor in deciding on my proper conduct. For (a) it is certainly clear that the actual strength of *other men's* desire to do what they believe to be right is a very relevant factor in deciding what I ought to do. Most people believe that it is wrong to read private letters, but I know that their desire to do what they believe to be right is very liable to be overcome by their curiosity. And this is a relevant factor in my decision that I ought to keep important private letters under lock and key. But further (b) a man's knowledge that his own desire to keep sober because he believes sobriety to be right is very liable to be overcome by his desire to be drunk when he tastes alcohol is a relevant factor in judging whether he ought or ought not to be a total abstainer. These of course are cases where of two alternatives A and B, A would have better consequences if it were not that it presents a temptation where my sense of duty is weakest, and that the total consequences will be worse if A be performed and the temptation be succumbed to than if B be performed. And it may be admitted that this does not correspond accurately to the situation that led to this discussion.

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We may state that situation as follows. A and B are two alternatives open to me, and I believe that A will have better consequences than B. A presents no *especially* dangerous temptation, the only temptation that it presents to my weak sense of duty is the temptation of not completing it. B does not present this temptation so strongly.[3] Is the weakness of my sense of duty a relevant factor here? It seems to me that it very well may be. It is no doubt true to say that we are here turning our attention from the probable consequences of our actions to the probability of our performing an action. But, since the consequences will not follow unless we do the action, the probability of the consequences must depend on the probability that we shall carry the action through, and this depends on the strength of my sense of duty as against the particular sacrifices that the action involves. If the consequences of A be better than those of B and those of B better than those of the absence or partial completion of A, and if the weakness of my own sense of duty in the face of the special sacrifices involved in A make it more likely that I shall complete B than A, it is my duty to choose B rather than A; and the relevant factor is the weakness of my sense of duty. We see then how very limited is that principle which some men seem to have thought the basis of ethics.

There remains, however, one further question to discuss. We have all along assumed that the rightness or wrongness of an action depends wholly on its actual or probable consequences. Now this seems to me not to be true. It is quite certain that its rightness is a function of the goodness of its probable consequences, but, as I have tried to prove in an earlier paper in this JOURNAL,[4] its rightness is not entirely determined by this. The rightness seems to be a function of the intrinsic goodness of its motive and of the goodness of its probable consequences. Moreover, it is

[3] An example would be the case of a man who was considering whether he ought to enlist in view of the fact that his sense of duty might not be strong enough to prevent him from running away in battle.

[4] The Doctrine of Consequences in Ethics, xxiv, 293.

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certain that in many judgments when we appear to be judging about the rightness or wrongness of an act we are really judging simply about the goodness or badness of a motive. It is therefore necessary for the sake of completeness to ask whether the principle of false universalisation is of any use as a means of judging about motives. It might conceivably have either of two uses. It might (a) help us to recognize what our motives really are, which is of course an essential preliminary to passing any reasonable judgment of value upon them. Or (b) it might help us to judge whether our motives once recognised are good or bad. Moreover, while it is certain that motives have value as means, it seems to me possible that they have intrinsic value, and tolerably certain that they can alter the intrinsic value of wholes consisting of themselves and their consequences. So that (b) divides into three questions. Does the principle help us to judge the goodness of a motive (i) as a means, (ii) as an end, or does it enable us to see (iii) whether its presence adds to or lessens the intrinsic value of a whole composed of itself and a certain set of consequences?

(a) If I propose to perform a certain act and then am asked to contemplate the hypothesis that everyone acts as I propose to do, it will be necessary for me to be quite clear how I *do* propose to act and why. I shall have every reason to try and be clear on this point because otherwise the universalisation will not be fair. Hence if I am challenged to make the universalisation, and especially if I object to the way in which my interlocutor makes it for me, I shall have a very good chance of recognising what my motive really is.

(b) i. The principle of false generalisation may very well show me that my motive is (in a certain special sense which we will explain in a moment) bad as a means. It will not indeed prove to me that my motive in my circumstances leads to worse results than a different motive; but it may show me that it is bad as a means in the sense that it would be very unfortunte if it were at all a common

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motive with people. Now this does not prove that it actually leads to bad results in *any* case, for you cannot argue from the fact that the *coexistence* of this motive in a great many people would lead to bad results that its existence in any particular person will lead to bad results. Thus it is only in a very special and not very useful sense that the principle will show that a motive is bad as a means. It is very easy to commit a gross fallacy here. This is to confuse the two statements "the motive *m* frequently leads to bad results" and "the frequency of the motive *m* would lead to bad results." From the former we could conclude that any particular instance of the motive is likely to lead to bad results; from the latter we can conclude nothing of the sort. And it is only the latter that could be proved by the principle of false universalisation.

(b) ii and iii. I think that the principle has very little direct connexion with the intrinsic goodness of motives or with the goodness which their presence adds to or subtracts from that of other wholes. But there is a rather roundabout connexion of the following kind. There happens to be one motive—the desire to do what is believed to be right and reasonable as such—which is (a) intrinsically good and (b) adds to the goodness of a great many (though not I think of all) sets of consequences produced by it. Now it is on the whole true of the world as at present constituted that this motive also has beneficial results in the great majority of cases, and that the results of everybody acting from it would be very beneficial. (This would of course be false if the world were so constituted that the more people tried to judge dispassionately about the goodness of the results of certain actions the more they were likely to be mistaken. But there seems no reason to take such a depressing view as this.) Hence if it can be shown that the results of a number of people acting as I propose to act from my motives would be worse than if they acted differently there is at least a strong presumption that my motive is not the desire to do what *is* right and reasonable. Of course even if my motive were a different one it need

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not be a bad one. But at least the argument supplies some presumption that my motive does not belong to the most important class of motives which are recognized to be intrinsically good and to add greatly to the goodness of the wholes that are connected with them as consequences.

Such then are the modest and doubtful functions of the principle of false universalisation. Most of its alleged uses we have seen are sheerly fallacious; and often where we cannot prove a fallacy we can see that there is very likely to be one and can produce no clear case where it is quite certain that no fallacy lurks. The most important use is to lead us to the principle of fairness, and yet there seems to be very little logical connexion between the two; so that it is rather a matter of psychology than of logical necessity that the principle of fairness is generally introduced by that of false universalisation. And the principle of fairness itself bristles with difficulties which I have barely touched, but to which I hope to return in a later paper.

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THE PHILOSOPHICAL INHERITANCE OF RABINDRANATH TAGORE.

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ALTHOUGH the teaching of Rabindranath Tagore represents a certain modification of the prevailing conservatism of Indian philosophical and religious thought, it would be a mistake to find in his work an abrupt transition from an old world to a new. He is in no sense a reactionary. He has much in sympathy with such a retrospective teacher as the late Swami Vivekananda who was altogether held in bondage by the ideas of the past and whose influence upon the people of India is still unrivalled even by that of the world famous poet and thinker who is the particular object of this study. Moreover, Rabindranath belongs to a religious community which, while undoubtedly progressive, yet attaches great value to traditional religious thought, and he shares the reverence of his brethren.

Thus the saying that he is "to a large extent a member of a western religious world" is true only in a limited sense. One may, of course, with complete justification indicate that the light came to him "not by eastern windows only." He opened his soul to the ideas of the west and he has drawn from Christianity, especially, ideas the influence of which upon his whole trend of thought has not always been acknowledged. The eastern dress which he has given to these ideas has often concealed both from his own eyes and those of his readers their true origin, and, although truth is one and inhabits no particular clime, absence of indication here has sometimes led to consequences prejudicial to the development of truth itself. The ideas of Rabindranath, like those of so many thinkers of modern India, have often been quite wrongly assigned to Indian sources, and this has led his adherents to expect, also mistakenly, that they will be able to derive from the

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same source many other ideas suitable for application to modern conditions of life and stimulative of individual and social progress. The result is a certain degree of blindness to the necessity of that radical transformation of Indian religious and metaphysical thought which can alone make progress possible. The western admirers of Rabindranath seem in like manner to have been misled into minimising the vast importance of the contribution which Christianity has made to the thought of modern India, and they have failed in a measure to realise their responsibility in reference to the continuance and enlargement of that contribution. Any sustained study of Indian thought will reveal to us the greatness of India's need for a more vivifying conception of religion than her own sacred tradition can supply. The writings of Rabindranath Tagore are evidence that this need is being met by the sons of India herself, but it would have been met still more fully if he had pointed a little more frequently to the sources of his inspiration, and had directed others, in language which they could not fail to understand, towards the same fountain.

The influence of non-Indian religious thought is unmistakable, and the ideas which Rabindranath has derived from the philosophical, scientific, ethical and even poetical, thought of the west appear repeatedly on his pages, increasing his emphasis upon activity and personality, and impressing upon him the necessity of a metaphysical basis for morality. They help him to realise that the crown of life is ultimately in affirmation rather than in negation, and that deep and abiding sources of joy are to be found in the communion of the free spirit with the eternal love of God, manifested in and through the actual experiences of our every day.

Yet though Rabindranath is *both* Eastern and Western, he is more Eastern than Western, and it would be a mistake to think that, because he sits somewhat loose to any particular Indian system of doctrine or of life, the traditional element in his teaching is anything less than dominating.

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It may be true, as Mr. Leslie Johnston says, that he had "no coherent body of theology and religious practice behind him" (cf. *Quarterly Review*, Jan. 1914), or, as Pandit S. N. Tattvabhushan indicates, that he was led more by the workings of his own soul than by the influence and inspiration of any great teacher such as his father, the Maharshi or Keshub Chun der Sen. But we must not be misled by such statements as these into minimising the influence upon him of the past intellectual and religious history of India. He may not have followed any particular religious teacher amongst the Brahmos, but this may have been because his inheritance was wider than Brahmoism. In certain aspects indeed he is hardly so revolutionary as Brahmoism in general. As regards his relations to the land of his birth, he might be said to unite two streams—the Brahmo tradition and the orthodox tradition—without surrendering himself altogether to the force of either current.

He himself readily acknowledges his debt to the past of his own race, country and family. In the preface to *Sadhana* he speaks reverently of the influence of his father upon him, and tells how he was brought up in a family where the texts of the Upanishads were used daily in family worship. The ancient scriptures of his country are not for him matters of antiquarian interest only. "The verses of the Upanishads," he says, "and the teachings of Buddha have ever been things of the spirit and therefore endowed with boundless vital growth." His avowed aim is to give to western readers "an opportunity of coming into touch with the ancient spirit of India as revealed in her sacred texts and manifested in the life of to-day" (Preface, VII and VIII). What specially interests us here is to show how far the ancient spirit of India—especially in its pantheistic aspects—moulds the thought of this modern teacher, how he draws from this inheritance the best that is in it, but also to a large extent modifies and transforms it, leaving behind much that is less desirable; and how finally he is prevented by traditional pantheistic influence

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from giving to his characteristic thoughts the completeness they might otherwise have had.

The influence upon him of the concrete and positive pantheism of India is greater than that of the abstract phase. At times, indeed, he shows a certain negative tendency, but it is a negative tendency which emphasises all that is good in negation. It is a transformation of ordinary values in the interests of spirituality, and is not a denial of all values. He tries to make men understand the worthlessness of their ordinary possessions, but does not teach that everything in ordinary experience is worthless. He wishes indeed that only a little be left of him, but the little that is left must be sufficient to link every part of his being with God (cf. *Gitanjali*, 34). Occasionally, indeed, there is evidence of a strain of passivity such as is the usual accompaniment of negative pantheism, and the individual seems to be lost in the immensity of the All. But on the whole the trend of his teaching is in the active and positive direction. He would inspire us with courage to "knock at every open door." When he emphasises the idea that the end we are to aim at is union with God, he is careful also to point out that this union is not to be reached by destroying all differences, but rather by conserving those that have worth in a fullness of communion with the Divine.

The *All* for Rabindranath is the concrete and not the abstract universal. Expression in the particular is a reality, and not merely an appearance. "The universal," he says "is ever seeking its consummation in the unique," and this phrase marks a strong contrast between his teaching and that of the arch traditionalist Vivekananda, who holds that this striving of the Absolute to express itself in the finite is doomed to hopeless failure, and that "there will come a time when the Absolute will find that it is impossible and will have to beat a retreat" (Vivekananda, *Jnana-Yoga*, p. 16). Rabindranath explicitly dissociates himself from the negative aspect of thought which this quotation from Vivekananda indicates. He

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holds strongly that the pervading tendency of Indian thought is positive, and that its highest endeavour is to affirm the presence of the Infinite in all things. We have but to open our eyes to the nature that is around us, and we shall find everywhere an object of worship. If we will but view all these objects in their ultimate unity, rising beyond law to the Being of whose character law is the expression, we shall reach the Infinite. From the bosom of the Infinite our lives have come, but we have left our resting place and our home. Our hands are filled with the merchandise of the markets of the world, and with getting and spending we have laid waste our powers. Or, to vary the metaphor, we have tried to walk on "the single rope of humanity" in the tenuous life of individuality. So we have been straining ever to keep our balance, and, abandoning ourselves to the necessity of incessant movement, we have missed the secret of the repose of nature. We have forgotten the breadth of our life and its infinitely multiplied and various connection with the All. We have forgotten, as the *Gitanjali* puts it in still another figure, that "the same stream of life, which runs through my veins night and day, runs through the world and dances in rhythmic measure" (69).

Rabindranath is almost Wordsworthian in his attitude to natural beauty, in his appreciation of details and his prayer that the doors of his senses may never be shut. But it is of his debt to eastern tradition that he is most fully aware even in this connection. He points out the difference between Greek and Indian civilisation. The former was "nurtured within city walls," and the walls became typical of its character. Indian civilisation, on the other hand, found its natural home in forests, near to nature, surrounded by her vast life. For this reason there was in India no thought of an antagonism between man and nature, no insatiable desire on the part of man to wrest treasures from nature, or, more prosaically, to detach certain portions of land and make them his very own by building a wall round them. We must break down these

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walls and abandon the whole mental attitude which they indicate, if we are to reach oneness with Nature and the Universal. This idea is beautifully expressed in *Gitanjali* (p. 29), "I am ever busy building this wall all around, and as this wall goes up into the sky day by day, I lose sight of my true being in its dark shadow." We must break down this wall, in which we take so much pride, and which we keep in such good repair. We must breathe the air of nature, which is Divine. The same idea of the necessity of freeing the spirit from artificial restraints is expressed in the *Gitanjali* also under the figures of sweeping away tinsel or breaking through a chain (28 and 31).

At the same time we should be careful not to allow ourselves to degenerate into mere naturalism and materialism. We must not so abandon ourselves to the particularising worship of the various objects in nature as to forget the central spiritual unity. We "must clearly realise some central truth which will give an outlook over the widest possible field" (*Sadhana* 27). The *All* is possessed when we find the *One*, and the One may be discovered if we follow the teaching of the *Upanishads* and descend to the depths of the human soul. And in this region where the divine and human meet, we shall discover, not by reasoning or demonstration, but by a direct flash of intuition, "the bridge leading to the immortal being."

Thus, in striving towards a full realisation of the capacities of its nature, the soul takes two directions—outwards and inward. It may lay stress upon being or upon becoming, upon essence or upon manifestation. The chief contribution which Rabindranath makes to the development of Indian thought is his union of these two attitudes, his constant insistence that a consciousness of the spirituality of the universe must not be allowed to deprive the universe of meaning. He thinks that if the Western thinker has been mistaken in directing his attention too exclusively outwards, the Eastern thinker, on the other hand, has occupied himself too exclusively with the inward aspect of reality. He has despised the "open field of the exercise

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of power" and "the world of extension." Of himself and his countrymen Rabindranath says, "We would realise Brahma in meditation only in his aspect of completeness, we have determined not to see him in the commerce of the universe, in his aspect of evolution. That is why in our seekers we so often find the intoxication of the spirit and its consequent degradation. Their faith would acknowledge no bondage of law, their imagination soars unrestricted, their conduct disdains to offer any explanation to reason. Their intellect, in its vain attempts to see Brahma inseparable from his creation, works itself stone-dry, and their heart seeking to confine him within its own outpourings, swoons in a drunken ecstacy of emotion. They have not even kept within reach of any standard whereby they can measure the loss of strength and character which manhood sustains by thus ignoring the bonds of law and the claims of action in the external universe" (*Sadhana*, 127).

We could hardly desire more vigorous protest than this against the destructive tendencies which are inherent in traditional Indian philosophy and which manifest themselves in the degradation of its pure spirituality to the level of non-ethical emotionalism and quietism. It is part of Rabindranath's greatness that he is so discriminating in regard to the exact quality of his debt to the thought of his own land. He takes up a resolute attitude in regard to the conception of *maya* (illusion). He will have none of it as an explanation of the miseries and confusions of human thought and life. For him it is only a *description*, or at most a hint that nothing can really exist apart from God. He will not for a moment agree to the depreciation of the manifestations of God which is usually involved in the conception. "Who so steeped in untruth as to dare to call all this untrue—this great world of men, this civilisation of expanding humanity, this eternal effort of man. . . . He who can think of this immensity of achievement as an immense fraud, can he truly believe in God who is the truth?" (*Sadhana*, 130).

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Two consequences, with effect upon the religious life, emerge from this protest. If the world is not unmeaning, it is unmeaning to leave it behind. Mere renunciation or sacrifice for its own sake is valueless. Renunciation ought to mean only the giving up of the lower for the sake of the higher, of the narrower for the sake of the wider. It is a *readjustment* of values, a fuller realisation than in the unawakened state of the capabilities of the soul; it is not a destruction of these capabilities. Neither can we find any justification for withdrawal from the ordinary life of humanity. It is the utmost foolishness to sacrifice "the grand self-expression of humanity" for "incessant self-consecration." "Who is there that thinks this secluded communion the highest form of religion?" (*Sadhana*, 129).

The other consequence is that we find, for almost the first time in Indian philosophy, a clear emphasis upon activity as the highest form of religious expression. It is true that there are traces in the *Upanishads* of a regard for the conception of divine activity, but the prevailing Indian tendency is to view the God who manifests himself in the universe as the penultimate and not the ultimate form of the Divine, and the very conception of him as a more or less weak concession to human poverty of religious expression. The consequence of this, again, is that human activity can at best be only a means, and can have no permanent meaning or value. In the writings of Vivekananda activity is chiefly valued because it provides a means for the realisation of the worthlessness of the world. But with Rabindranath human activity is a co-operation with God. It is no doubt also a means of moral purification, for he tells us that it is when the soul "sleeps in stagnation" that its enemies gain overmastering strength. But the highest motive for human activity is that God has worked and is working. "It is not enough that He should alone work to relieve our want, but He should give us the desire and the strength to work with him in his activity and in the exercise of his goodness" (*Sadhana*, 132). Occasionally this conception of the Divine working is expressed in such

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an excessively pantheistic manner (as, *e.g.*, in the phrase "the irresistible current of thy universal energy") as to imply a passive yielding to an overwhelming world-might. But, on the whole, the working of God is used as a metaphysical basis for a conception of the worth of human activity, and in order to supply that activity with a religious motive. In work we find at once the reality of our own souls and a means of communion with God. "Where can I meet thee unless in my home made thine? Where can I join thee unless in this my work transformed into thy work? If I leave my home I shall not reach thy home; if I cease my work, I can never join thee in thy work" (*Sadhana*, 163). The idea that in order to share in the divine working we need not leave our ordinary occupations is emphasized and given more definitely social reference in the well-known passage in *Gitanjali:* "Leave this chanting and singing and telling of beads. . . . Open thine eyes and see thy God is not before thee. He is where the tiller is tilling the hard ground and where the path-maker is breaking stones. He is with them in sun and shower, and his garment is covered with dust. Put off thy holy mantle and even like him come down on the dusty soil." It is noteworthy as showing how thought in India is breaking away from the older conceptions, that in the recent frequent references to Rabindranath's work, this has been amongst the passages most frequently quoted by his own countrymen.

An idea closely connected with the foregoing, but at the same time one which marks a great advance upon previous Indian thought, is that the working of God is full of purpose. This conception presents a very decided contrast to the teaching of the other great leader of modern religious thought, Vivekananda. For him the ideal is a conception to be treated with scorn, and is useful only to inspire the ignorant to a semblance of morality. But for Rabindranath the working of God is a true revelation of his purpose. Especially in the history of humanity is his will revealed. The progress of humanity is as the move-

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ment of a triumphal car, and God is the charioteer directing it to its goal. Man fulfils his duty in answering the call to join in this triumphal progress. And, seeing that this onward march of the purposes of God is one that may be described in moral terms, we get here at last what we have long been searching for in vain in Indian philosophy—a metaphysical and religious basis for morality. It is now allowed that moral predicates may be attributed to God and may become a description of his working. In the conception of the good we recognise "an inner kinship" with God. The divine activity is no longer aimless, but conforms to laws of the nature of God, and these laws furnish a basis for morality. The moral life thus becomes the universal life. To live in perfect goodness is to realise one's life in the All, and this, according to Rabindranath, was the heavenly vision which illuminated the words and thoughts and deeds of the Christ. Thus goodness becomes distinguished from evil in that the former is infinitely more real than the latter. We have passed far beyond the doctrine of Vivekananda, according to which good and evil are but the obverse and reverse of the same coin. We are no longer asked to admit that the quantity of good and evil are equal and that every increase of good means a corresponding increase of evil. We are no longer put off with Vivekananda's grudging concession that good may be "a coating slightly nearer to reality than evil." The ideal is no longer merely a temporary conception useful for the restraint of the mentally childish. We no longer look upon unrestrained activity as in itself a means of liberation. On the contrary, Rabindranath tells us, as Vivekananda, in consistency, ought also to have told us, that "where there is madness of license, the soul ceases to be free" (*Sadhana*, 119). Duty is not to be regarded as the bondage of the slave. On the contrary, it is the law and harmony of the universe, and in the performance of it alone can we win peace and freedom for our souls. "The bass and treble strings of our duty are only bonds so long as we cannot maintain them steadfastly attuned according to the law of truth" (*Sadhana*, 128).

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This strongly ethical conception of the universe and of human activity in relation to it, necessitates a still further advance upon the prevalent Indian ideas of human freedom. For the first time in Indian philosophical and religious thought freedom also wins a satisfactory metaphysical basis. The teaching of Rabindranath in this respect marks a definite breach with the tradition he has inherited, and entitles him to be called the herald of the coming of dawn. He recognises that co-operation and communion are unintelligible conceptions unless they involve two factors, both of which are permanently valuable. Determinism in the temporal action of the individual and his final absorption in the Universal are alike alien to the main tendency of Rabindranath's teaching. Human freedom is a gift from God. It is an outcome of the divine joy, that joy which we begin to understand when we rise above conceptions of mere law and utility, when, *e.g.*, a flower ceases to be for us only a means to the fruit, and becomes a revelation of beauty and a mirror for the mind of God. This conception of *joy* is illuminative of the whole question. Joy, in order to be fully realised, involves duality; when we rejoice we wish others to share our joy, and, if no friends are present with us, we, as it were, tell our joy to a second self. It is the same with God, and thus we see that the outcome of the divine *joy* is the divine *love*.

Again, love can persist only as it secures reciprocity, *i.e.*, in communion with a will which is free to return an answer of love. "Thy love for me still waits for my love" (*Gitanjali*, 32). In order to procure such an answering love, God imposes limitations upon himself. He restrains himself from interference with the will of man and refuses to rob him of the fulness of his personality. This personality will be allowed to continue and expand, and the increase of it will constitute an even more complete answer to the love of God. Though, as we have seen, Rabindranath uses phrases, such as "merging in the universal," which have a definitely pantheistic colouring, he does not

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fall into Vivekananda's fallacy of thinking that the individual self must always be the selfish self, and that, therefore, in order to get rid of selfishness, this individual self must be altogether abandoned. He does not urge the annihilation of anything that is of value in personality. It is only the "pride of personality" that we must leave behind; for this "will be a curse if we cannot give it up in love" (*Sadhana*, 91). We have only to see that we do not fret against circumstances, that the current of our life does not break through the banks and lose itself in low-lying marshes. It must flow clear and strong to the awaiting sea of the Divine Love. Nothing of value, we repeat, according to the teaching of Rabindranath, is to be left behind. At the very least we must retain sufficient strength to surrender our strength to the will of God (cf. *Gitanjali*, 36). Our closer union with God means increase in the fulness of our own personality—"Man's deepest joy is in growing greater and greater by more and more union with the All"; and conversely "the more vigorous our individuality, the more does it widen towards the universal" (59 and 61). And in our fulness of individual life and strength we shall enter into the joy of God, we shall hear the song of the Eternal and "translate back the singing into the original joy." If there is pain in our lives, we shall realise that it is but a means to our perfecting, and shall thus understand that it is the symbol of the possibility of joy.

The religious philosophy of Rabindranath thus ends on a note of resolute optimism. "Pain is not a fixture in life," and "the essence of evil is impermanence." It would seem ungracious to object to this strengthening of the optimistic elements in our view of life, especially as optimism is somewhat rare in Indian writing. We certainly do not object to the optimism of this teaching. On the contrary, we regard this optimism as one of the signs of the return of vitality to Indian thought. We thoroughly agree with the dictum of Rabindranath himself that "pessimism is a form of dipsomania, disdaining healthy

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nourishment," and that the mere fact of our continuing in existence proves that existence is worthy of continuance (cf. *Sadhana*, p. 56). But, at the same time, we cannot help an uncomfortable feeling that the optimism here is a little too facile, that it is in danger of approaching rather too closely the superficial kind of optimism which passes so readily into pessimism when confronted with the tragedies and the deeper seriousness of life. There are undoubtedly genuinely optimistic elements in Rabindranath's teaching, and we connect these elements closely with the non-pantheistic aspects of his doctrine, with his emphasis upon the revealing character of morality, upon the value of personality and of the ordinary life of action. But we feel at the same time that he has not, in the building of his system as a whole, gone down to the bed-rock foundation of these non-pantheistic conceptions. Sometimes it would seem as if he were content with the shifting sand of pantheistic speculation. There is thus a certain instability about the whole edifice. It is a magnificent palace of thought and beauty which he has erected, but sometimes we feel as if we should prefer to dwell in the open rather than in a building whose foundations are in part so insufficiently secured.

In plain language, our criticism is that our author has not sufficiently considered the implications of the Divine gift of freedom to man. This freedom, if the conception of it is to enable us to deal with the actual facts of life, must be a real freedom. In other words it must be a freedom to do evil as well as to do good; and this evil, again, must be distinctly recognised as more than error and as more than temporary. Rabindranath no doubt admits the existence of sin and the painful consciousness of it. He quotes the prayer with earnest sympathy, "Father, completely sweep away all my sins," and, again, he describes sin as "the blurring of truth which clouds the purity of our consciousness" (*Sadhana*, 38), and as "the innermost barrier which keeps us apart from God." By sin he allows that our vision of the truth is obstructed.

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But is this all? We ask whether it is not possible to have a vision of the truth and yet refuse to follow the truth. And, again, we may become hardened into a depraved habit of mind, which, though not original, may yet be inseparable, in so far as our own unaided efforts to remove it are concerned. Sinfulness may not be our nature, but it may be our second nature. It seems to us that Rabindranath's philosophy of religion overlooks these possibilities, overlooks the fact that even God has to pay a price for the creation of human freedom. This price consists in taking the risk that man may abuse his freedom and may find himself helpless in the grasp of sin. And so, in face of this possibility, which our deepest moral consciousness must admit has become an actuality, joy cannot be regarded as the only element in the heart of God. There must be sorrow as well. This sorrow will not express itself in mere sentimental pity or facile forgiveness. As we believe that the moral nature of God is a constant, there must be in God the attitude of opposition to the sin which human beings have introduced. The conception of the wrath of God does *not* belong to obsolete systems of theology; it is the correspondence in the Divine to the quickened conscience of the individual, and this correspondence can never cease. But the wrath of God is certainly not the last word. As the moral qualities of God remain constant, so also does his joy; only in face of human sin the joy will be an ideal which has once more to be reached through the dealing with human sin. In relation to man the joy will now have to express itself in love which is more than mere benevolence, more than forgetful forgiveness or the gift of enlightenment. It will express itself in redemption, in a bringing of the divine strength to the aid of human weakness, in a restoration of the fallen will. A gospel which consists merely in joy can be satisfactory only if the mind has been enlightened and the will has been already turned towards goodness; but without a conception of the sorrowing love and regenerating power of God it fails to touch the deepest need of humanity,

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and appeals only to the select few who have had the benefits of enlightenment and who have already shown to a certain extent a consciousness of the nearness of God. A true optimism must dig deeper and lay broader foundations than Rabindranath has done. It must not represent the unity of God and man so simply that we forget that it is possible to wander far away from God on the paths of evil and of sin, and that the return to God must be much more than a placid following of the course of nature. The possibility of return becomes a certainty only if the separating distance and the difficulties of the return have been correctly estimated, only if we realise that the winning of the best often means not only a constant onward progress but also an entire reversal, in pain perhaps, of the direction in which our inclinations have previously led us. There is too little of the cutting off of the offending right hand or foot in Rabindranath's philosophy. There is a danger that when we yearn that "our emptied life may be dipped in the ocean" and "plunged in the deepest fulness," our sense of responsibility may also be engulfed, or that, when we say that we must "become Brahman," we forget that the ideal is communion rather than unity, and that it is possible for us, and possible for those whose uplifting we desire, to *refuse* to enter into that communion. A religion which is to lead to victory and to permanent joy must be able to deal effectively even with such a refusal. The philosophy of Rabindranath stands between the old world and the new in Indian thought-development. He retains what is best in Indian pantheistic tradition—its abhorrence of materialism, its intense spirituality and its conception of the nearness of the divine to the human. He points out relentlessly the defects of abstract pantheism, and rightly exhibits the religious attractiveness of the concrete world in which we live. He emphasises the defects of that philosophy which would evacuate our experiences of their highest meaning and deprive us of inspiration for activity. He draws a clear distinction between good and evil, and finds a truly religious basis for morality. He pre-

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serves for time and for eternity the value of the individual, and discovers an explanation of human freedom in the conception of the self-limitation of God. But his pantheism still prevents him from sounding the depths of the problems of sin, from realising all that is involved in this gift of freedom and from becoming clearly conscious of the central need of the human soul. The progress of Indian religious thought will consist in the carrying forward, in greater freedom from the burden of tradition, Rabindranath's own criticism of the philosophical inheritance, and in a greater readiness to receive and develop the ideas from other sources by which he has already been so largely inspired.

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MAY BELIEF OUTSTRIP EVIDENCE?

DURANT DRAKE.

IT SEEMS hardly debatable that loyalty to the truth, or to whatever probability the evidence may seem to us individually to suggest, is to be set above loyalty to any authority of creed or dogma. But what are we to do in cases where there is no convincing evidence one way or the other, or where we are unable to satisfy ourselves of its leading? The more rigorous of the scientifically minded insist that in all such cases, where we have not found sufficient evidence to convince our reason, we must remain agnostic, keep our judgment in suspense, refuse to entertain any opinion.

But, declares the practical man, this asceticism of belief is impracticable and undesirable. The beliefs which are so clearly evidenced as to be beyond doubt are not enough to live upon; we need to hold, at least provisionally, some belief concerning matters about which evidence is lacking one way or the other. To keep our minds a blank and refuse to decide at all would be to paralyze our action. Some choice is forced upon us; we have not only a right, but a duty, to adopt, at our own risk, one conjecture or the other, and act upon it. The youth has to ask himself the question, Will it be best for me to study this, or to study that? to enter this vocation, or that? He cannot have enough knowledge of his own powers and talents, or of the untried tasks into which his choice will lead him, to feel sure that he is judging aright. But decide one way or the other he must. His vocation is a venture of faith. So is his marriage, and parenthood, and a host of other undertakings. The man who should refuse to let faith have its way in any of these matters would amount to nothing, would lose his chance to count in the world. In the world of belief, as in the world of action—and, for that

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matter, the two are inseparably connected—it is, nothing venture nothing have.

No doubt we must discriminate between different types of situation. There are cases, where the decision has little or no practical bearing, where we may best keep our minds in the state of suspended judgment, in order not to bias our investigation or that of others. There are, further, cases of great importance, where we must check our belief from outrunning the evidence, because a hasty and ill-founded belief may be a wrong to some one. Clifford's ship-owner should, indeed, have been especially slow to believe in the seaworthiness of his vessel, because that belief, if false, was pregnant with danger to those who might embark. A jury should be extra cautious about believing in the guilt of a man whom they have power to send to prison or the gallows. We should all hesitate long before believing a muckraker or a gossip, before believing in the guilt of a friend, or in the perfidy of a neighboring nation. Readiness to believe what it is to our material advantage, and some one else's disadvantage, that we believe, or what might involve us in a terrible and unnecessary war, is a grave fault and cannot be too severely rebuked.

On the other hand, there are cases where the risk in not believing seems to be greater than that in believing. Will this course of treatment cure my sickness? I may have little to go on in trusting it; but if I refuse my belief I lose that chance of being cured. Will the use of alcohol hurt me? I may not be convinced by the evidence shown me that it will; but unless I believe that it will, and avoid it, I run the risk of irreparable injury. Shall I believe in a personal God? The argument may seem to be weak; but the risk seems to be greater in losing the comfort of a belief that may be true than in enjoying a belief that may be false. The fact is that, in these matters, not to believe is, practically, to disbelieve. To refuse to believe in a personal God means to go without the sense of His companionship and care almost, if not quite, as much as if we flatly disbelieved. If the evidence is not strong, one way

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or the other, why should we not choose to avoid the greater danger, and accept, provisionally, some working belief, as we would use a temporary bridge or building, in order that our practical life may not be checked by a needlessly hesitating caution?

Certainly in such cases we should not forget that we are dealing with possibilities only, that we are making a venture of faith. We should be tentative and humble in our assertions of belief, always maintaining the distinction between working hypotheses and well-evidenced conclusions, never erecting our personal faith into dogma or thrusting it rudely upon others. For the sake of all clearness of thought, for the sake of freedom from discord and strife, above all, for the sake of the dignity and repute of our religion, we must cease from our cocksure assertion of these beliefs that we cannot prove, cease from using them as a requisite of piety. But with these cautions in mind, there seems to be no real reason why we should not allow our minds to run far beyond the little mass of observations and inferences that we have as yet accumulated, and adopt, as working hypotheses, any conjectures or hopes that can serve as a useful basis for our practical activity.

But if we agree that belief may properly, on occasion, outstrip evidence, we have yet to consider whether these working hypotheses, these over-beliefs, may be influenced by non-evidential motives. In simpler phrase, may we let ourselves be guided by our desires? Is the "will to believe" legitimate?

Not a few, the Cliffords, the Huxleys, and other men of fine scruples, insist that to allow our wish to be father to belief is to corrupt our intellects. To refuse to face the fact of our actual ignorance, and let the mind dwell only upon the most palatable possibilities, is a sort of dreaming that is cowardly and demoralizing. Moreover, there is something childishly silly in thus dwelling in heavens of our own invention instead of recognizing our actual situation and making the best of it. "There is that to my own perception in honeyed theories of our place or prospects as men,

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in postulates of a golden solution of things, fetched from whatever heaven of invention, which are accredited because so eminently to our taste,—there is that in the sight of the constructive postulator, fancy-free, busy at his landscape-gardening in the infinite—which is not so noticeably immoral as ridiculous."[1]

To such asceticism of belief we must all give great honor. In a world where few question seriously the views which form their particular intellectual environment, and fewer still weigh impartially the evidence on matters that affect their happiness, the refusal to be influenced by the congeniality of a conception is a very rare and admirable virtue. But is it necessary? The venture of faith in what is consoling and inspiring will not mean tampering with the truth or vitiating our intellectual integrity, if we keep these over-beliefs as personal and provisional, clearly discriminating between them and those beliefs that rest upon evidence. It is not ridiculous, if these beliefs do really console and inspire us. In cases where we really do not know, to seek to deprive men of their conviction that their happiest hopes are well founded, is to diminish human happiness unwarrantably. It may be seriously urged, indeed, that it is our duty to cherish optimistic beliefs, of whatever sort are plausible to our particular minds, to "accept the richer of two unproved possibilities," since hopefulness is a great stimulant to energy and addition to the worth of life.

Certain cases, at least, seem clear. When believing in a desirable future fact may help to bring that fact about, it would be wrong to refuse to utilize this means. James gives us the case of the Alpine climber who must leap a chasm to extricate himself from an unlucky situation. A strict accounting of the evidence gained from his past experience might suggest grave doubts as to his ability to make the leap in safety. Must he then refuse to make the venture of faith? But precisely that faith is needed to nerve his powers and make its object actual. So

[1] D. S. Miller, INTERNATIONAL JOURNAL OF ETHICS, vol. 9, p. 171.

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in every man's life there are occasions when belief in oneself or in others may make a real difference in the outcome. Must a mother refuse to allow herself to believe in the morality of her son, in his abilities, and success? But many a son who, according to the evidence at hand, has seemed to others worthless, has been actually saved and made into a man by this blind belief of his mother. A lover's belief that he can win the girl of his desire, my belief that you like me, the patriot's belief that his country will be victorious in war, may help in the attaining of the object coveted. To abstain from faith, even in a forlorn hope, under such circumstances, might involve a practical loss for which the value of the intellectual scrupulousness could hardly compensate.

But in other cases, where no practical consequences are involved, to let belief follow desire seems innocent. To believe in the safety of dear ones whom you know to be in danger or in your own safe emergence from a dangerous situation, even though that belief can in no wise affect the outcome, seems clear gain. Why should we not live as long as we can in the presence of these more hopeful thoughts? Even if they turn out to be mistaken, we shall have been for so long the happier. So it seems to be with the beliefs in immortality, in the personality of God, and the other matters where evidence fails us. Our highest hopes may turn out to be true—*we believe they will.* Why should we then keep reminding ourselves that they are, after all, but hopes, and darkening our horizon by the reminder of our ignorance? We know, after all, so little; the uncharted is vastly greater than the little fragments of reality we understand. As regards all the infinite deeps beyond our gaze, let us be unashamed to trust our hopes.

We must, of course, hold all these over-beliefs open to revision when evidence appears; we must not let the "will to believe" deter us from the tedious and worrisome process of investigation and criticism; we must not pretend that our hopes are proved simply because we hold them personally with conviction; we must not suppose that our

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faiths are truths "above reason," or that their comforting power is a proof of their truth. Above all, we must not thrust them dogmatically upon others or make them a requirement of admission to our church. We must not seek to *base* our religion upon our unproved hopes; Christianity has too much that is empirically verifiable for it to be rested upon foundations that may, even conceivably, be shaken. But we may well let our religion flower into these beautiful hopes as its sweetest development and consummation.

Can we not say even more than this? Such a faith in the meaning and destiny of life is not only legitimate, it is almost necessary, for most men, for the richest unfolding of their energies and the deepest dedication to their ideals. The men who have done great things are the men who have had faith in something, a faith held perhaps in spite of appearances or of ridicule, a faith that they followed like a guiding star through long years of patient labor and utmost sacrifice. Alexander, with his faith in the irresistible power of his Hellenic phalanx; Paul, with his faith that his Gospel could redeem the world; Cecil Rhodes and the other empire-builders, with their faith in the future of the lands to which they gave their lives—such are the men who have pushed humanity along the path of progress. Can we not almost say that to be great is to cherish some such faith and let it dominate every hour? The patriot has faith in his country, the lover in his lady, the religious man in his God. Why should we not believe —earnestly, eagerly, as the patriot does, ardently, passionately, as the lover does? What if we should be mistaken? Even so, it will be better to have believed. But however mistaken the particular form of our hopes may be, nothing can shake our conviction that somehow good will triumph over evil, that some great destiny awaits us which will justify the patience and the passion of our faith.

DURANT DRAKE.

VASSAR COLLEGE.

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PROCEEDINGS OF THE FOURTH CONFERENCE ON LEGAL AND SOCIAL PHILOSOPHY.

The fourth meeting of the conference in Legal and Social Philosophy was held under the chairmanship of Professor Roscoe Pound at Columbia University, on Friday and Saturday, November 26–27, 1915. The seven papers read dealt with different phases of the problem of law and force in private and public affairs. On Friday evening the members of the Conference were the guests of Columbia University at a dinner after which followed an informal discussion as to the outlook for legal-philosophical studies in this country. A vote of thanks was passed to Columbia University for its generous hospitality, and the chairman, Professor John Dewey, and the secretary were appointed a committee to arrange for the publications of the papers of the conference.

M. R. COHEN,
Secretary.

The papers read by Professors Cohen, Orth, and Dewey are printed in full in this issue. Summaries of the other papers follow.

THE EXERCISE OF FORCE IN THE INTEREST OF FREEDOM. Felix Adler. Columbia University.

Force is a moral adiaphoron. The stigma attaching to the use of force belongs rather to its abuse. The employment of force is good or bad according as the ends for which it is used are good or bad.

The precept of non-resistance in the Sermon on the Mount is to be understood as a piece of ethical irony.

The right, or to be more explicit, the duty, of society to coerce individual members of it rests on the same ground and holds within the same limits as the duty of the individual to coerce himself. Self-coercion depends on the difference in the quality of one's impulses, on the choice one is bound to make between competitive ends. Self-coercion is of two kinds: stimulative and repressive; stimulative to overcome inertia, repressive to subject wrong to right impulses.

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He who denies the duty of self-coercion must, to be consistent, fall back on the position of the Cynics. For they, the Cynics, were indeed consistent. They asserted not only the right of the individual to be free from outside compulsion, but also the right of each individual moment of the individual's life to be lived without regard or subjection to future moments. Hence they rejected civilization and its tasks, inasmuch as the prosecution of any task involves the subordination of the present to the content of some future moment.

But if the coercion of a man by himself be admitted, it follows that the exercise of force upon a man by society must in principle be likewise admitted. For we are social by nature; we take an interest in the achievement by each one of his ends, and we regard such achievement as a social benefit.

As to the limits within which outside interference is to be permitted and welcomed, these can best be prescribed by fastening attention upon the end to be attained. And here the positive conception of freedom seems to be the most helpful,—freedom defined as the release in each one of his most essential self, that is, of his distinctive gift and capability, or of that in him which is unique or most nearly so. A system of society in which such valuable contributions were elicited from each would be the ideal society. Stimulative and repressive social coercion are justified in so far as they provoke energy and check disturbing impulses,—always of course without discouraging spontaneity, which is the very good to be secured.

The antithesis of reason and force common in discussions of this subject seems misleading and inadequate; since reason is a faculty of inference and not of preference, has to do with the adapting of means to ends, and does not of itself afford guidance in the choice of ends.

The concept of freedom as defined is more illuminating. Let us contrast freedom and force, not reason and force.

The idea of law that would follow from what has been said may be illustrated by comparing the action of law with that of automatism in the human body. The system of co-ordinations by which we learn to walk, or acquire any kind of skill, such as that of performing on a musical instrument, is at first painfully and consciously acquired. Consciousness superintends every step in the process. But after a time the sequences reel off automatically. Consciousness retires from the field, ascends

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to a higher plane, and devotes itself to more interesting and significant business. Law, taking it in its broadest sense, may be regarded as the automatic machinery of freedom. It is the system of stimulations and repressions which the experience of mankind at any given time has found conducive to the attainment of the superior ends of life. In the minds of the more advanced members of the community repressive laws like the prohibitions of murder, theft, etc., have already become automatic. Such a thing as questioning or transgressing these laws never once in a lifetime occurs to them. (Of the stimulative laws, such as the requirement to pay taxes in support of the progressive interests of society, the same is not yet true.) As regards the backward members of society, however, the repressive laws are educative. Just as in certain diseases the convalescent needs to acquire all over again the art of walking, which his neighbors exercise without thinking, so the backward members of society have to learn painfully those habits of repression which for others have sunk below the threshold of consciousness.

Social compulsion therefore may be defined as discipline in the interest of positive freedom. We may expect that in future this salutary kind of compulsion will go to even much greater lengths than it has yet gone. Society as organized in the state has undoubtedly the right to interfere in the choice of the sexes by prohibiting the marriage of persons afflicted with infectious disease. If the study of human character could ever be so far developed as to determine what kind of temperaments are radically incompatible with one another (a bare throw in the air of course), it would be within the province of the state to prohibit the conjugal union of such temperaments, and thus to prevent the disastrous effects on real freedom which such incompatibilities are apt to cause.

I am well aware of the perils of this point of view. There is a brutal factor in the action of society, as in that of individuals. A given community is apt to mistake its prejudices for principles, its torpor for conservatism, its superstitions for spirituality. Such apprehensions as those that weighed on the mind of John Stuart Mill as set forth in his Essay on Liberty are not to be lightly dismissed. And yet the main trend of his argument was plainly determined by an individualistic conception of liberty which many of us no longer share. It is safe to say that on the whole the benefits of coercion outweigh the detriments. We

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have only to picture to ourselves a state of society in which these coercions should not exist to realize that this is so. The dangers are real, but are due to the abuse of force and not to the exercise of it under the controlling idea of positive freedom which is here proposed.

EXTRA LEGAL FORCE IN THE ADMINISTRATION OF THE CRIMINAL LAW. E. C. Keedy. University of Pennsylvania.

The administration of the criminal law in the United States is affected by various extra-legal forces. The greatest of these is public opinion, which not only determines legislation, but also influences the action of administrative officials and the outcome of particular trials. Recent statutes restraining to some extent the privileges of an accused person and extending those of the state in a criminal trial are the result of the growing power of collectivism. The same philosophic trend is responsible for statutes such as the Sherman anti-trust law, restricting the individual's activity in business matters.

The enforcement of law is largely dependent upon public opinion. This is principally due to the fact that those officials whose duty it is to enforce the law are in most instances chosen by popular vote and frequently use their offices so as to secure political advancement. Laws restricting what are popularly regarded as legitimate personal privileges are rarely enforced. Instances of these are statutes regulating the sale of alcoholic liquors, forbidding the sale or smoking of cigarettes, fixing a speed limit for motor vehicles, and forbidding spitting on the sidewalk or riding on the platform of street cars. Seldom is there a prosecution for violation of the statutes making criminal the commoner forms of sexual immorality, viz., fornication, prostitution and adultery. As it is common knowledge that these violations are very numerous, it seems safe to conclude that the public is opposed or indifferent to the enforcement of these statutes.

Statutory laws against contraconception are found in many of the states. As there is a strong popular sentiment in favor of birth control these statutes are rarely enforced, their chief effect being to increase the difficulty of securing information on this subject. One of the results of this condition is abortion, which is a severe offense in all the states. Prosecutions for abortion are practically never instituted unless the mother dies. In such a case popular indignation is aroused rather by the unsuccessful

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character of the operation than by the fact of the operation itself. Statements by physicians indicate the very large number of abortions annually occurring in this country. Though there are, perhaps, a less number of abortions because of the prohibiting laws, yet the chief effect of these laws is to prevent reputable surgeons from performing the operation, and thereby to increase the number of deaths because of operations performed by unskilful operators under septic conditions. Our statute books contain many laws making criminal certain business practices, but these are only to a small extent operative because they do not meet with popular approval. Public opinion also influences the verdicts of juries, as was evidenced in the Thaw, Becker, and Frank cases.

In observing the effect of public opinion on the administration of the criminal law three characteristics may be noted. They are (1) sentimentalism, (2) intellectual dishonesty, (3) disrespect for law.

Other forces which produce results not in accordance with the provisions of our criminal law are mob violence, the police "third-degree," the unwritten law, group activity for particular ends, and newspapers. All these exist because they are supported by public opinion.

THE SOVEREIGNTY OF THE STATE.[1] Harold Laski. McGill University.

The English analytic school of jurisprudence has worked out a monistic theory of the state which makes the rights of individuals and communities within the state derivative and not primary. It is believed by its adherents that the State possesses for its decrees a moral sanction superior to that of every other group. These other groups are indeed made to depend for their existence on the state and it is therefore assumed that they ought to surrender their minor interests to those of the larger whole.

The State is thus made to correspond to the Absolute of metaphysics and the groups are no more than incidents to its existence. They have to be its parts because, as Lotze argued, independence would mean impenetrability. Therefore just as it is possible to condemn or to praise the Absolute only as a whole the character of which is implied in its parts, so is it only possible to condemn or praise the state as a whole. What is

[1] Printed in full in the *Journal of Philosophy, Psychology and Scientific Methods*, Feb. 17, 1916.

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in its parts is that which is implied in the whole and they have to be judged by its conduct.

Such sovereignty seems politically mistaken and morally iniquitous. We do deem real the goodness or badness of the groups. We do distinguish between, let us say, the individual American and America. The parts have a real and separate existence and have to be judged as independent and self-sufficing moral units. Nor is this all. If the state in the last instance must be obeyed we lose hold of the distinction between right and wrong. For there is rarely in marginal cases a means of distinguishing between the General Will and the Will of all as interpreted by the Government until after the event has or has not given it moral validation. So men and groups will continually be called upon to surrender their consciences to the dictates of a state which in any sane moral theory will be immoral. Such an attitude seems in a high degree dangerous.

It also lacks all historical justification. It seems quite clear that men as a fact follow the command which seems to them on the whole most in accordance with their conscience. When marginal cases like those of the Ulster unionists, the militant suffragists, the South Wales miners are considered, it is obvious that the demands of groups other than the state and, as a fact, in antagonism to it, make a greater moral appeal and possess for them greater validity than the supposed sovereign state, so that when disagreement occurs the sovereignty can become impotence. If we replace this attitude by a pluralistic theory we shall admit that the state is not to be regarded as a series of concentric circles of which it is the outermost envelope; on the contrary it is to be looked upon simply as one of the many groups to which the individual belongs. It competes for his allegiance just like his church or race or trade-union, and when conflict arises the choice of the individual ought to be made on moral grounds. He has not to invest the action of the state with any *a priori* moral validity. He has to follow its dictates only as they are ethically higher than those of its possible opponent. It is claimed that from this type of conflict a progressive morality will be secured more socially useful than that which would result from the adoption of the monistic theory. When the state has to prove itself by the superiority of its moral programme and the fulfilment of that Programme's promise we have a guarantee of advance which is of the greatest validity—certainly greater than when we assume that the state can do no wrong. History is strewn with the tragic results of this last assumption.

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BOOK REVIEWS.

THE PHILOSOPHY OF NIETZSCHE. By A. Wolf, D.Lit. London: Constable and Company, 1915. Pp. 116.

Nietzsche is one of those writers whose philosophy evaporates when detached from its literary qualities, and whose literature owes its charm not alone to the personality and wisdom of the man, but to a claim to scientific truth. Such authors have always a peculiar influence over the large semi-philosophical public, who are spared the austere effort of criticism required by either metaphysics or literature, by either Spinoza or Stendhal; who enjoy the luxury of confounding, and avoid the task of combining, different interests.

If Nietzsche is a philosopher of this hybrid kind, it is instructive to view the result when a professional philosopher of the competence of Dr. Wolf attempts an introduction to his philosophy, omitting all detail of Nietzsche's career, and with little reference to his extra-philosophic interests. In this short series of lectures, interestingly, if rather carelessly written, Dr. Wolf has given us an admirable piece of simplification; in one hundred and sixteen pages he has presented an excellent outline of all that is strictly philosophic in Nietzsche's writings.

The first twenty-one pages are taken up with a discussion of Nietzsche's views on war. Dr. Wolf, naturally, is concerned to show that Nietzsche maintained no philosophy of militarism. This contention he easily proves by quotation. What he does not show, and what, from the title of the book, we might call upon him to show, is that Nietzsche had *any* philosophic view upon the subject, or did anything beyond voicing all the conflicting judgments which occur to every thoughtful person. It is not sufficient that Nietzsche had "no perverted taste for cruelty or slaughter" (p. 21). If this is all that Dr. Wolf can say for him, we do not find, at least on the subject of war, that "the broad outlines of Nietzsche's thought . . . are clear enough to the careful reader" (p. 41), for there were simply no broad outlines at all.

We leave Chapter IV (Nietzsche's Theory of Knowledge) with the suspicion that the simplification has simplified the philosophy away. Dr. Wolf assures us that Nietzsche had a theory of knowledge. "The main point, I take it, is to bring out the human

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'perspective' involved in all human 'knowledge,' somewhat as Kant and others had done before him, only more so" (p. 53). Nietzsche is "inclined to suspect the validity of all human knowledge" (p. 95). He holds it "beyond the range of possibilities for an instrument to criticise properly its own fitness" (p. 44). Sometimes he holds that the mind alters things; sometimes that there is no other nature than that we know. Sometimes truth is docile and pragmatist; sometimes hostile and to be avoided. Dr. Wolf has well summarised these views, but hardly convinces us that they form a "theory of knowledge."

In treating Nietzsche's theory of the universe, Dr. Wolf is more successful. Correctly, we think, he holds Nietzsche's view of nature to be essentially Schopenhauerian. It is not clear as to how nearly Nietzsche comes to making will (to power) or the various centres of will, *ultimate* reality; nor is it clear exactly what his argument against Schopenhauer is. And even in so brief a discussion we should have liked to see Nietzsche's views on evolution and change compared with those of Bergson and James, and to hear more of his attitude toward Darwinism, and something of his affinities with Butler.

In spite of Dr. Wolf's sympathetic treatment, one does not receive the impression that Nietzsche held any consistent moral policy in regard to the cosmic flux. Nor does the last chapter (Theory of Conduct) help us very much, though here again we find an excellent summary. The world-will is creative (p. 65) like Bergson's, but, more sincerely than Bergson's, is without sense or promise. Sometimes the world appears malleable in the hands of humanity. Sometimes the will is conceived as something quite unconscious, and consciousness as epiphenomenal. Dr. Wolf's conclusion that Nietzsche "quite consistently decided in favour of a limited freedom of the will" (p. 87) is not altogether convincing.

The last two chapters are the best of the book, though we regret the omission of any account of Nietzsche's views on art, with the interesting pessimism with respect to the future of art evinced in Human, All-too-Human.

T. Stearns Eliot.

London, England.

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THE ORIGINS OF CHRISTIANITY, with an outline of Van Manen's Analysis of the Pauline Literature. By Thomas Whittaker. A new edition, with prologue. London: Watts and Company, 1914. Pp. xlii, 212.

The prologue of this book, taken in conjunction with the two prefaces, is a psychological document of unusual interest. Mr. Whittaker states, with much frankness, the influences which led him to the position which he now maintains. He began by adopting the theory of Van Manen, who denied the Pauline authorship of the Epistles usually attributed to him, and placed them all in the second century. Mr. Whittaker at this time believed that Jesus actually lived in Palestine. Later, influenced apparently by Mr. J. M. Robertson, Mr. Whittaker abandoned this view, and adopted the theory that Jesus never existed and that the Gospel story is wholly mythical. But even this theory, as held by Mr. Robertson, was not radical enough for Mr. Whittaker. Mr. Whittaker came to believe that the period of oral myth-making, in which Christianity originated, did not begin till after the year 70, and that the production of the New Testament literature (which is wholly pseudepigraphic) was not commenced till the second century. Mr. Whittaker's views on the Old Testament developed in a closely analogous way, and in the end he assigned the origin of Judaism, along with Zoroastrianism, to the monotheism arrived at by the higher minds in the Egyptian and Babylonian priesthood.

In the section on "The Origins of Christianity," Mr. Whittaker brings forward some arguments in favour of his general theory. He says that the argument for the mythical theory is inductive and cumulative. But an inductive argument must start with facts and build on evidence, and Mr. Whittaker gives us astonishingly little of either. In particular he does not make clear what it was about Christianity as conceived by him that enabled it to grow and exercise the influence it did. The basis of the myth, says Mr. Whittaker, was a rumor. There were certainly many rumors in Palestine. But why did the Jesus-rumor prevail? Because Jesus was "an actual name in Palestine." But there were many other actual names in Palestine. Because the Jesus-myth was connected with an ancient Joshua-cult. But practically no evidence for this is given by Mr. Whittaker. He does not even mention the evidence collected by Mr. Robertson. The teaching that was invented for this new cult was not, says

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Mr. Whittaker, specially distinctive. "Its notable sayings are for the most part to be read word for word in the Old Testament." Christianity steadily grew, and grew out of nothing. In effect, Mr. Whittaker asks us to believe a miracle more stupendous than any in the Gospels—that Christianity grew out of literally nothing. He dismisses the testimony of the Gospels in exactly eighteen lines, with the judgment, "We are remote enough here from memoirs of someone who really lived." This is really simply a private judgment, unsupported by serious argument. He accepts the famous passage in Tacitus as genuine, but explains it away. Tacitus confused the Christians of Trajan's day with certain Messianic Jews in the time of Nero. These Messianic Jews could be known to Greeks and Romans by no other name, says Mr. Whittaker, than "Christians." But this is surely quite a gratuitous assumption, on a level with the view of Lietzmann and others that Jesus could not have used the term "Son of man" because it could not be represented in Aramaic. And it seems unlikely that these "Messianic Jews" did exist in Rome as such a distinctive sect as to render it practicable for the authorities in Rome to regard them as responsible for the fire, in distinction from the Jews in general. Mr. Whittaker's general argument is perfectly circular. In Nero's day there could not be Christians, because the myth had not then arisen. But again there is no evidence that there were Christians in Nero's day, therefore the myth had not yet arisen. All through, Mr. Whittaker seems to me to dismiss the evidence for the traditional view in a very cavalier manner. Much of it he never mentions. No notice, for example, is taken of the important evidence of Papias. Mr. Whittaker's arguments would prove much history mythical. Peter, for instance, the "rock" apostle, is dismissed as a myth, largely because of his symbolical name. But because a man has a symbolical name, it does not follow that he is a myth. One might as well say that Socrates must have been a myth, because his mother and father had such delightfully symbolical names as Phainarete and Sophroniskos. The book includes an exposition of Van Manen's views on Paul and the Pauline Epistles, to which Mr. Whittaker has added, in an appendix, an analysis of the Epistle to the Galatians.

G. A. JOHNSTON.

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A Defence of Aristocracy: A Textbook for Tories. By Anthony M. Ludovici. London: Constable and Company, 1915. Pp. xii, 459.

This book was completed in the spring of 1914, but the author, who has been on active service since the war began, has left it unaltered, in the hope that 'its sharp and definite point of view' may suggest some reconstructive ideals after the war. And indeed, in spite of the excessive laudation with which the book was received by the Catholic clique in the London press, it is a noticeable and individual piece of work. It reveals wide and unusual knowledge—with some startling lacunæ; bold thinking, with lapses into childish superficiality; and a keen sense of language, which yet permits such pomposities as: 'The Royal Psalmist' and 'The presbyopic sage.' The author's thesis is that the vigour and order of civilisation can only be preserved by the rule of exceptional men; 'the lucky strokes of nature,' the 'examples of flourishing life,' whom he terms Aristocrats. Further, that the development of an Aristocracy, demands long tradition, close inbreeding, with an occasional cross, and rigorous selection, both in eliminating and incorporating certain elements in the life of the community. Mr. Ludovici, in his choice of examples to prove these contentions, literally ranges the earth from China to Peru, citing both Confucius and the Incas, and views Greece and Republican Rome, and the Laws of Manu, through the rosiest glasses. He scorns the economic interpretation of history, and becomes frankly amusing when he 'polishes off' the Socialist case against accumulations of wealth, irrespective of the uses to which they are put, in a couple of pages. Yet no Socialist could bring a stronger indictment than he does, in his analysis both of the methods of recruiting the British peerage, since 1688, and of the shortsighted, slip-shod greed, with which its incomparable opportunities for leadership were frittered away, and its responsibilities abused. 'The exploitation and cruelty of modern capitalism, began on the land'; and 'Success in trade, like success at law, is absolutely no criterion of ruler quality, nor of taste: on the contrary, it is more often the proof of the reverse of these two possessions.' He remarks of the Luddite riots in 1811, that the governing class never seems to have dreamt that 'there was a psychology of the question, a sociology of the question, apart from its surface aspect, as a blow to prosperous industry and commerce'; and he exposes the sordid mo-

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notony and sick ugliness of the only life open to most of the industrialised proletariat. His statistics of the amount spent on education by the government, previous to the Act of 1870, are illuminating, in view of the present agitation for 'economies' in this department. He strikes hard straight at three quarters of the English (and English-speaking!) press: 'According to the Puritan, you can perpetrate any piece of literary or intellectual vulgarity in your books, so long as you do not refer, save with horror, to the joy and beauty of sex.' The account of the systematic impoverishment of the English people's physique and spirit, by a lowering dietary, since the Puritan Commonwealth, is carefully documented and interesting. Mr. Ludovici's quite Italian emphasis on personal beauty as an inherent quality of the true Aristocrat, sometimes leads him into gross errors of taste, and his androcentric point of view ignores free sexual selection by women and voluntary conscious maternity as factors in strengthening and ennobling a race. But, the last chapter is fine and memorable, with its definition of culture, and its plea for 'independence of thought and deed that does not mind, for a while at least, incurring the suspicion even of disreputability or dirt,' and for vigilant discrimination.

F. W. Stella Browne.

London, England.

The Soul of Europe. By Joseph Mc Cabe. London: Fisher Unwin, 1915. Pp. vi–1407.

It would be difficult to find any better book than this to act as a counterblow to the stream of imbecility that flows from both belligerents through their respective newspapers. Mr. Mc Cabe begins his book by an analysis of what the Germans call the "German soul." It is scrupulously fair and accurate—though in some respects too favourable to Germany. Thus he ignores the great efforts that were made in Europe to satisfy the German demand for expansion before the war. The very able summary of each European nation does not shed much light on the reason why Europe should have an European soul—why, for instance, I feel less of a foreigner when I land at Calais than when I land at New York City—nor does he assert any such doctrine. For Mr. Mc Cabe, as for Aristotle, each human soul has "infinite plasticity"; it is moulded not even by climate so much as by the

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contact of "cultural" environment. He illustrates this thesis by enumerating the extraordinary variability of fish in the course of their evolution and by historical examples. Thus the Slav is not necessarily or inherently melancholy, and even an Englishman in Russia can realize how melancholy any human being can become in a country which resembles the Atlantic Ocean in a terrestrial form. Similarly the Walloon and Fleming are in sharp racial and temperamental contrast; yet Belgium has stood the severest tests of nationality. Again, the alleged differences in sexual conduct between the English and the French are clearly due to the historical considerations which Mr. Mc Cabe mentions and not to racial differences.

In passing, one may object to Mr. Mc Cabe for once falling away from his own principles and writing of "Teutonic England." England is in fact no more and no less Teutonic than France, and we might have been reminded that one of the principal differences in English and German history is that the English inherited the traditions of Roman civilization which the North German did not.

To dissipate the pernicious nonsense that has been written about racial character by men of all nations is more than a matter of academic interest, for delusions of this kind are at the root of all the auto-intoxication that leads to war—whether it be the delusion of the "Anglo Saxon superiority" or the "Deutsche Seele." And the frank recognition of the educability of human nature and of the necessity for not exploiting its impressionability for purposes of international crime will have to penetrate even the obtuse intelligence of monarchs and politicians if we are ever to have a lasting peace. For the soul of Europe cannot exist without a body, and will be sadly cramped if it is to be in financial servitude to other continents.

E. S. P. HAYNES.

London, England.

THE FUTURE OF DEMOCRACY. By H. M. Hyndman. London: George Allen Unwin, 1915. Pp. ix, 220.

Monographs dealing with the course and effects of the war are at a singular disadvantage, owing to the rapid development of events, both on the various battle fronts, and in internal politics. They are fated to be ephemeral and inconclusive, unless in the case of such carefully documented studies as G. D. H. Cole's

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"Labour in War Time," which will remain a valuable historical source and should be a warning to organized labour. The raison-d'être of Mr. Hyndman's set of short essays is not clear. They are too vague to be helpful signposts for the future, and in spite of some significant and illuminating pieces of information (such as attest for instance, the tyrannical preponderance of the German element in the International Socialist Congress of recent years), they are in no sense an account of the conditions which led up to the war. The writing is careless, and with but few of the graphic touches which light up his "Reminiscences." The book is a snapshot: a somewhat blurred and undeveloped record of the state of England by the end of 1915. Herein lies its value, for Mr. Hyndman's treatment of the future is perfunctory and inadequate. But he bears witness to the general assault on our liberties, which is being pressed in the name of a War of Liberation. He recapitulates the wage slavery under the Munitions Act, the reintroduction of child labour into farms and factories, the "economies" on the education—such as it is—provided for the children of the poor, the wholesale robbery by mineowners, shipowners and dealers in foodstuffs, the victimisation of certain individuals and associations under the cloak of the Defence of the Realm Act, and the monumental imbecilities of the Censorship. The author's experience of business and finance gives weight to his only detailed suggestions—on the criticism of British methods of banking and railway management: "If the cost of haulage is maintained, it is useless to talk of effective competition with Germany."

He points out the longsuffering patience of the mass of the workers before the war, though "a pound sterling, valued at the level of twenty shillings in 1901, could procure necessaries only to the value of 16/6, or at the outside 17/- in August 1914:" and pays a just tribute to the generous idealism of "the class that is doing most of the fighting, and all the production." Yet he underrates the importance of the Trade Unions for the future. Narrow as their vision has often been, and incompetent as many of their leaders undoubtedly are, the Trade Unions and the Co-operative Societies are the only articulate and functional organs of working-class opinion and civic life. Their variety of structure—and within certain limits, of outlook—is a counterbalance to bureaucratic uniformity, and the future depends perhaps mainly on their capacity to weather the industrial crisis after the war, and to extend and consolidate their power.

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Mr. Hyndman does not overlook the intensity of race and religious feuds in Eastern Europe. Here he shows clearer perception than some members of the Union of Democratic Control, who, in their anxiety to understand the German case, ignore the rights and wrongs of Czechs, Slovaks and Serbs. Alexinsky, Bechhöfer, Plechanoff, Kuropotkin and Vinogradoff, as well as independent German Socialists, support his contention that "the Germans, finding that their economic and bureaucratic hold on Russia was slipping from their grasp, cried out that emancipated Russia might overwhelm them." At the same time Mr. Hyndman is free from the sickly current cult for Tzarism and the Orthodox Church. And at a time when the tide of religious reaction is rising in France, and our own ecclesiastics have been more than usually vocal, it is good to read his pertinent reply to the talk of "the débacle of Socialism." He rightly protests that what the war does confirm is the moral and intellectual bankruptcy of official Christianity, and of Christ's teaching as the supreme and sole efficacious ideal. There is an interesting chapter on Marxism, in which Mr. Hyndman—somewhat late in the day,—rejects the extreme Marxian doctrine, and cites as an example of the power of other factors than the economic, "the steady growth of Socialism in the purely agricultural communities of Finland." But he has not wholly overcome Marxian determinism. The facile optimism of some of his forecasts belies his recognition of the imperative need for real education and reorganization. Whether as a record or a warning, his book suffers from brevity, and lack of coherence and proportion and has certainly received a misleading title.

F. W. Stella Browne.

London.

Religion and Reality: A Study in the Philosophy of Mysticism. By James Henry Tuckwell. London: Methuen & Company, 1915. Pp. xi, 318.

In the first of the two parts into which this book is divided Mr. Tuckwell, after insisting on the importance of distinguishing the essence of religion from its external forms, criticises James's denial that there is a religious essence, and maintains that a psychological method such as James adopted is incapable of leading to the discovery of the essence of religion. He then passes in review a large number of definitions of religion, finding

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himself most in sympathy with that of Dr. Allan Menzies, namely that religion is the worship of higher powers. In Part II the author treats of Perfect Experience, using the term synonymously with the Perfect Life, and the Life of the Perfect, to designate the Absolute, or Eternal and Ultimate Reality; and he finds, by a process not of psychological analysis but of metaphysical reflection, that it possesses three main characteristics. It must be the All and all-inclusive, it must be perfectly harmonious, and it must be immediate (the last term being defined to mean "of the nature of feeling rather than of thought"). This immediate experience of reality, Mr. Tuckwell argues, is given in our direct knowledge of the self. In distinction from Mr. Bradley, to whom he is otherwise much indebted, he maintains that the self is real, not a mere appearance of reality, and that upon the immediate awareness of selfhood is based all our knowledge.

The merits and defects of the book are closely connected. Though Mr. Tuckwell shares to some extent the mystic's distrust of reason, he sees that a Philosophy of Mysticism must be rational; and in the attempt to reconcile reason and religion he undertakes a most thorough examination of the meaning and knowability of the Perfect Experience. But in the end, in spite of his transparent sincerity, he leaves many points far from clear. He insists, for example, that reason falls short of reality, and argues that thought cannot be attributed to the Absolute as an element in its fundamental nature. But, if thought be excluded from the Absolute, can the Absolute be the Perfect Experience, which has already been defined as all-inclusive? And I cannot think that Mr. Tuckwell has made out a good case for attributing Selfhood to the Absolute, but not Personality. Further, the conception of immediacy is left very vague. At one time, *e.g.* p. 229 ff., he distinguishes two kinds of immediacy, sentient and emotional; at others, *e.g.* p. 270 ff., he speaks of such immediacies as "the feeling of the truth," which it would be difficult to reduce to either of the two previously mentioned types; and his account of the higher immediacies of mystical religion is not very satisfying. Though the book bears the sub-title "A Study in the Philosophy of Mysticism," it is only in the concluding chapter that the actual experience of the mystic is discussed at any length. The book, indeed, is not so much a Philosophy of Mysticism as a defence of a type of philosophico-religious intuitionism.

G. A. JOHNSTON.

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GOD AND FREEDOM IN HUMAN EXPERIENCE. By the Right Rev. C. F. D'Arcy, D.D. London: Arnold, 1915. (The Donnellian Lectures for 1913–1914.) Pp. vi, 312.

It is perhaps hardly fair to regard this work from the point of view of strict philosophy; but it would be still less fair to regard it as merely the expression of a religious creed. The fact is that Dr. D'Arcy is primarily a theologian; and although he brings to the study of theological doctrines much genuine philosophical learning, of both past and present tendencies of thought, the conclusions he wishes to establish are theological conclusions, and he consequently employs metaphysical arguments only so far as they will help him to attain this end. The resulting eclecticism is exhibited chiefly in connection with Idealism and Bergson.

Dr. D'Arcy has long been known as an idealist of the school of Green. He is in this work most definitely a follower of Berkeley. Nevertheless, although he believes Berkeley to be one of the greatest of philosophers, he modifies somewhat his doctrines. He attempts also to give some idea of the nature of God, a problem which Berkeley left almost untouched. We are, however, told little about God's nature. He is identified with the philosophical absolute, perhaps somewhat arbitrarily, and his life is thus on a higher plane than ours. His experience constitutes the highest degree of reality, a way of being that we are not able to realize even imaginatively. It is somewhat odd to find the principles of Berkeley in conjunction with the notion of degrees of reality. Dr. D'Arcy, however, places them so, and uses the notion of degrees in an ingenious manner throughout. Thus, God is *perfect*, because the degrees of reality form a hierarchy in perfection, and God is the highest degree of reality. Again, God is *personal*, because the highest degree of reality we know is personal, and the higher degrees must contain all the perfection of the lower. Evil is somehow explained in God, and the mere fact that we do not know *how* is intelligible because we cannot conceive the highest degree of reality.

But although God is the Absolute, Pantheism is not true; and human beings are ultimately real (although *not* substances) and free. Freedom is defined as a quality of motived action, and here in particular much use is made of Bergson, although Dr. D'Arcy has apparently not realized that the logical conclusion of Berg-

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son's treatment of Freedom is a determinism of the strictest sort. If we cannot understand how it is that God is omniscient and at the same time that we are free, we must have recourse to faith because theology demands the one and the moral life the other; and the conception of a higher degree of reality in which all such difficulties will be explained is at hand to help us. And all the ways of God to man are justified, if not to our understanding, at least to our faith. Dr. D'Arcy becomes almost dithyrambic over the value of pain, and its place in life; but his treatment is scarcely consistent, and makes us wonder if he has realized the force of Dr. Mc Taggart's analysis of the question. Dr. D'Arcy adds, as another demand of the moral life, that we are immortal.

Of all this one hardly knows what to say. The conclusions are those of Christian orthodoxy; but to imagine that they are borne out by any one of the philosophical theories used throughout the work to support this or that part of it, would be a fallacy. In spite of all the appearances to the contrary, it is not argument, but faith, which leads to the acceptance of these conclusions. An exception must be made in the case of the idealist argument which is generally employed to establish the spirituality of reality. Dr. D'Arcy uses this argument with strictness and consistency. He accepts its conclusion, however, somewhat too lightly, as though it were an eternal truth; and notwithstanding the broad philosophical culture revealed almost everywhere throughout the book, makes scarcely any reference to the large body of contemporary philosophical opinion which rejects it. In this connection it is perhaps pertinent to remark that Professor Alexander should not have been taken as typical of recent realists, since his theory of knowledge is a purely individual matter and is not held by any other important thinker of the modern realist school. And one would have liked to see in a review of recent philosophical theories a somewhat fuller statement of the position of Mr. Bertrand Russell than is given in the enigmatic note to page 74. It may be added that the statement (p. 18) that psychologists now universally agree that attention involves an act of will is incorrect. One of the primary classifications of attention by psychologists is into voluntary and *non-voluntary* (cf. Stout, *Groundwork*, p. 50). Such facts as these, however, do not alter the general character of the book, which, so far as correct and admirably clear expositions of various philosophical theories is concerned, leaves nothing to be desired.

BERNARD MUSCIO.

Cambridge, England.

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SHORTER NOTICES.

THE NATURAL HISTORY OF THE STATE. An Introduction to Political Science. By Henry Jones Ford. Princeton University Press, London: Humphrey Milford; Oxford University Press. 1915. $1.00 Net.

Without attempting an extended discussion of mooted points this book offers a convenient summary of those biological, psychological, and anthropological data which have a bearing upon origin of organized Society. The ultimate question of interest for the author is as to how far the naturalistic concept may be regarded as a principle for determining the validity of social and political theories. The position taken is that man is the product of social evolution rather than of what may be called individual evolution. The corollaries of this proposition tend in general to emphasize the significant authority and supremacy of the State. "The test of value in any institution is primarily not the advantage of the individual but the advantage of Society. Individual life enlarges by participation in a larger life; ascends by incorporation in a higher life." Many who will welcome the clear and concise conspectus of social and political beginnings here presented will find the transition from origin to validity abrupt and in need of much fuller defense, in view of such criticism as has been given by Sidgwick and Moore to the general conception of naturalism.

J. H. T.

FEAR AND CONVENTIONALITY. By Elsie Clews Parsons, Ph.D. New York and London: G. P. Putnam's Sons, 1914. $1.50.

The first sixteen chapters of the book give a highly interesting collection of customs which seem due to fear. Among the more important are relations to strangers, hospitality, introductions, caste, entertaining, and most significant of all those dealing with relations between the sexes, and age classes. While primitive peoples are largely drawn upon for material the author makes frequent illuminating interpretations of present customs. If not in every case convincing the interpretations are always suggestive. The final chapter on "Unconventional Society" points out the rate at which conventions are disappearing "largely, it seems to me, through the passing of social control into younger hands." Radical changes in hospitality, in the relations of old and young and especially in the relations of the sexes may be expected, although new controls may be confidently expected to develop based on feeling for personality, based on sympathy, to replace the old conventions based on fear. The bearings of this on marriage, social and family relations, as forecasted by the author raise many questions but those who are desirous to understand all the possibilities in our changing social order will find the whole book highly stimulating.

J. H. T.

OUTLINES OF INTERNATIONAL LAW. By Arnold Bennett Hall, J.D. Chicago: La Salle Extension University, 1915.

This volume "is intended as a brief, non-technical statement of the underlying principles of international law. It is not written for the specialist, but designed solely for the general student and reader who is interested in the world problems of the day." The author is Assistant Professor of Political Science in the University of Wisconsin. The text occupies 106 pages and gives an outline of many important general principles followed by chapters on independence and equality of states, territorial domains and

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jurisdictions, relations between states in peace, war, and neutrality. Appendices contain a classified bibliography; documents and conventions of the Hague Conferences, together with the full statements as to just what powers ratified the various articles; and the declaration of London concerning the laws of naval warfare, which has been so often referred to in recent controversies. The book will be found a convenient manual in this present period of stress.

J. H. T.

OUT OF WORK, A STUDY OF UNEMPLOYMENT. By Frances A. Kellor. New York and London: G. P. Putnam's Sons, 1915. Price $1.50.

Although the problem of unemployment is now less pressing than a year ago the conditions which give rise to unemployment are bound to recur and when the stress of unemployment is pressing there is no time to consider fundamental remedies, hence the thoughtful will wish to be studying the situation and its possible remedies when there is opportunity for careful study. The author's close relationship to agencies dealing with immigration makes the chapters dealing with aspects of the problem which are attributed to immigration especially full and significant. There is a great deal of concrete material, however, in all of the chapters which keeps the reader close to the facts. Both for the short-time programme of relief and for the long-time or preventive programme there is need of national as well as local co-operation. Methods of unemployment insurance as hitherto worked out in foreign countries are not especially adaptable to this country and would need careful modification.

While the author's constructive recommendations are—perhaps necessarily—schematic, the book ought to be read and studied by all who are dissatisfied with our present hand-to-mouth way of dealing with a great problem. Anyone who came at all close to the situation during the winters of 1914 and 1915 must have been painfully aware of two facts: (1) Such periods show a break-down of the industrial system regarded as a means of support. (2) It is preposterous to shift upon the shoulders of a few more sensitive, though not necessarily more able, persons the great burden. Voluntary measures are neither adequate nor just as a main dependence, whatever be their value as first aid or as supplementation.

J. H. T.

CONDUCT AND THE SUPERNATURAL. By Lionel Spencer Thornton, M.A., of the Community of the Resurrection, Mirfield. London: Longmans, Green and Company, 1915. Pp. xiv, 327.

This essay, in a slightly different form, gained the Cambridge Norrisian Prize for the year 1913. The title which it then bore—"Christian Ethical Ideals and Modern Reactions from Them"—indicates more precisely than the present one the aim and scope of the work. For it is really an apology, based upon a criticism of certain ethical systems which illustrate the reaction from Christianity, for the Christian ethic itself. Mr. Thornton is impressed at the outset with the variety and apparent irreconcilability of recent ethical theories, which show no agreement either as to the foundations upon which conduct is to be based or the aims by which it is to be directed, and he concludes, after examining a group of reactionary theories, that, as these natural systems are all imperfect, it is necessary to postulate a supernatural system, *i.e.* the Christian ethic. Now, the weakness of such a line of argument is, like that of Bossuet's famous

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argument for Authority, evident. For it does not follow from the failure of reactions from Christianity that Christianity is true, nor does it follow from the inadequacy of certain naturalistic and rationalistic systems of ethics that our only resource is supernaturalism. And the reactions which Mr. Thornton does examine have really very little philosophical importance. The critics of the Christian ethic whose doctrines he considers are Nietzsche, John Davidson, Bernard Shaw, H. G. Wells and H. S. Chamberlain, none of whom with the exception of Nietzsche speak with any real authority on ethics. Mr. Thornton's criticisms of these thinkers are, however, penetrative and often unanswerable; and he shows much skill in his endeavour to prove that they bear, as it were *a tergo*, an unwilling testimony to the truth of the Christian ethic. In the second of the two parts into which the book is divided the author gives a very fresh exposition of the two principles which form the basis of the Christian ethic, viz. the Otherworldly Principle and the Ascetic Principle. And it should be added that the essay is written in a vigorous and effective style.

G. A. JOHNSTON.

University of Glasgow, Scotland.

HUME'S PLACE IN ETHICS. By Edna Aston Shearer. Bryn Mawr: Pennsylvania, 1915. Pp. 86.

The author of this dissertation attempts a reconsideration of the place that Hume represents in the history of ethics. She feels so much dissatisfied with the place usually accorded Hume as finally to reject the conventional classification, which describes Hume as a utilitarian. The author considers the interpretation of Hume's writings in this way an error, although there are some passages that might have been written by a utilitarian. Even these passages, however, are not characteristic of the utilitarian viewpoint, if we take as the distinguishing mark of this viewpoint that it judges acts by consequences.

Hume's place is rather with the intuitionists in judging acts by the approval of a moral sense. The moral sense is instinctive, not derived. In support of this position generous quotations are given from both *Treatise* and *Enquiry;* which are treated as not differing fundamentally on this issue.

J. K.

TRACTS FOR THE TIMES. By Principal T. L. Vaswani of the Dyal Singh College, Lahore.

The particular numbers of these tracts at hand are reprints of articles, and of addresses and lectures delivered by Principal Vaswani at various gatherings. They are all written in the spirit of the "Nava Vidhan." This new dispensation has for its object the unification and harmonization of all religions, to construct the science of religion by a comparative study of the older religions. The central purpose is to bring about a sympathetic interest among all religionists to recognize with community of spirit, the only true living God.

J. K.

THE WILL IN ETHICS. By Theophilus B. Stork. New York: Sherman French and Co., 1915. Pp. xii, 190.

A very diffusely written book setting forth the place of Will in Ethics. The viewpoint is that the settlement of all ethical problems with reference to the Will involves the subordination of the individual will to the uni-

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versal will. The doctrine is assumed to be the Christian doctrine of Will, but the purpose of the author is to give it the support of recent conceptions of Psychology.

J. K.

RELIGIOUS VALUES AND INTELLECTUAL CONSISTENCY. By Edward Hartman Reisner. New York: The Science Press, 1915. Pp. v, 60.

This paper represents a fair statement of the Pragmatic attitude toward Religion.

The author takes religion to be a natural psychological product, a function of life developed out of man's reactions to his physical, social and ethical environments. Religion is defined as an emotional attitude toward the whole of experience. Religion involves judgments of value, and demands a certain amount of intellectual consistency.

The author describes the origin and disintegration of the intellectual setting of classical Christianity, and then discusses the attempt of Fichte, Hegel, and Royce to establish a philosophy of Religion. The entire dogma of God and religion was undermined by Kant. The Post-Kantians mentioned then attempted to establish the existence of God through a philosophy of religion. This attempt the author tells us has failed because of intellectual inconsistency. The point is that these philosophers had a mistaken notion of intellectual consistency. They attempted to make a religion while in truth Philosophy can only describe a religion as given.

The author concludes that the only intellectual consistency necessary in religion is that which will "free the life for whole-souled action." God is from this viewpoint a symbol for the fact that one recognizes the existence of the highest human values.

J. K.

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THE INTERNATIONAL
JOURNAL OF ETHICS

JULY, 1916.

MARRIAGE AND THE POPULATION QUESTION.

BERTRAND RUSSELL, F.R.S.

THE influence of the Christian religion on daily life has decayed very rapidly throughout Europe during the last hundred years. Not only has the proportion of nominal believers declined, but even among those who believe, the intensity and dogmatism of belief is enormously diminished. But there is one social institution which is still profoundly affected by the Christian tradition—I mean, the institution of marriage. The law and public opinion as regards marriage are dominated even now, to a very great extent, by the teachings of the Church, which continue to influence in this way the lives of men, women, and children in their most intimate concerns.

It is marriage as a political institution that I wish to consider, not marriage as a matter for the private morality of each individual. Marriage is regulated by law, and is regarded as a matter in which the community has a right to interfere. It is only the action of the community in regard to marriage that I am concerned to discuss: whether the present action furthers the life of the community, and, if not, in what ways it ought to be changed.

There are two questions to be asked in regard to any marriage system: first, how it affects the development and character of the men and women concerned; secondly, what is its influence on the propagation and education of

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children. These two questions are entirely distinct, and a system may well be desirable from one of these two points of view when it is very undesirable from the other. I propose first to describe the present English law and public opinion and practice in regard to the relations of the sexes, then to consider their effects as regards children, and finally to consider how these effects, which are bad, could be obviated by a system which would also have a better influence on the character and development of men and women.

The law in England is based upon the expectation that the great majority of marriages will be lifelong. A marriage can only be dissolved if either the wife or the husband, but not both, can be proved to have committed adultery. In case the husband is the "guilty party," he must also be guilty of cruelty or desertion. Even when these conditions are fulfilled, in practice only the well-to-do can be divorced, because the expense is very great.[1] A marriage cannot be dissolved for insanity or crime, or for cruelty, however abominable, or for desertion, or for adultery by both parties; and it cannot be dissolved for any cause whatever if both husband and wife have agreed that they wish it dissolved. In all these cases, the law regards the man and woman as bound together for life. A special official, the King's Proctor, is employed to prevent divorce when there is collusion and when both parties have committed adultery.[2]

[1] There was a provision for suits *in forma pauperis*, but for various reasons this provision was nearly useless; a new and somewhat better provision has recently been made, but is still very far from satisfactory.

[2] The following letter (*New Statesman*, Dec. 4, 1915) illustrates the nature of his activities:

"DIVORCE AND THE WAR. TO THE EDITOR OF THE NEW STATESMAN.

Sir,—The following episodes may be of interest to your readers. Under the new facilities for divorce offered to the London poor, a poor woman recently obtained a decree *nisi* for divorce against her husband, who had often covered her body with bruises, infected her with a dangerous disease, and committed bigamy. By this bigamous marriage the husband had ten illegitimate children. In order to prevent this decree being made absolute, the Treasury spent at least £200 of the taxes in briefing a leading counsel and an eminent

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This interesting system embodies the opinions held by the Church of England some fifty years ago, and by most nonconformists both then and now. It rests upon the assumption that adultery is sin, and that when this sin has been committed by one party to the marriage, the other is entitled to revenge if he is rich. But when both have committed the same sin, or when the one who has not committed it feels no righteous anger, the right to revenge does not exist. As soon as this point of view is understood, the law, which at first seems somewhat strange, is seen to be perfectly consistent. It rests, broadly speak-

junior counsel and in bringing about ten witnesses from a city 100 miles away to prove that this woman had committed casual acts of adultery in 1895 and 1898. The net result is that this woman will probably be forced by destitution into further adultery and that the husband will be able to treat his mistress exactly as he treated his wife, with impunity, so far as disease is concerned. In nearly every other civilized country the marriage would have been dissolved, the children could have been legitimated by subsequent marriage, and the lawyers employed by the Treasury would not have earned the large fees they did from the community for an achievement which seems to most other lawyers thoroughly anti-social in its effects. If any lawyers really feel that society is benefited by this sort of litigation, why cannot they give their services for nothing, like the lawyers who assisted the wife? If we are to practise economy in war time, why cannot the King's Proctor be satisfied with a junior counsel only? The fact remains that many persons situated like the husband and wife in question prefer to avoid having illegitimate children, and the birth-rate accordingly suffers.

The other episode is this. A divorce was obtained by Mr. A against Mrs. A and Mr. B. Mr. B was married and Mrs. B, on hearing of the divorce proceedings, obtained a decree *nisi* against Mr. B. Mr. B is at any moment liable to be called to the front, but Mrs. B has for some months declined to make the decree *nisi* absolute, and this prevents him marrying Mrs. A, as he feels in honour bound to do. Yet the law allows any petitioner, male or female, to obtain a decree *nisi* and to refrain from making it absolute for motives which are probably discreditable. The Divorce Law Commissioners strongly condemned this state of things, and the hardship in question is immensely aggravated in war time, just as the war has given rise to many cases of bigamy owing to the chivalrous desire of our soldiers to obtain for the *de facto* wife and family the separation allowance of the State. The legal wife is often united by similar ties to another man. I commend these facts to consideration in your columns, having regard to your frequent complaints of a falling birth-rate. The iniquity of our marriage laws is an important contributory cause to the fall in question. Yours, etc.,

E. S. P. HAYNES"

Nov. 29th.

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ing, upon four propositions: (1) that sexual intercourse outside marriage is sin; (2) that resentment of adultery by the "innocent" party is a righteous horror of wrong-doing; (3) that this resentment, but nothing else, may be rightly regarded as making a common life impossible; (4) that the poor have no right to fine feelings. The Church of England, under the influence of the High Church, has ceased to believe the third of these propositions, but it still believes the first and second, and does nothing actively to show that it disbelieves the fourth.

The penalty for infringing the marriage law is partly financial, but depends mainly upon public opinion. A rather small section of the public genuinely believes that sexual relations outside marriage are wicked; those who believe this are naturally kept in ignorance of the conduct of friends who feel otherwise, and are able to go through life not knowing how others live or what others think. This small section of the public regards as depraved not only actions, but opinions, which are contrary to its principles. It is able to control the professions of politicians through its influence on elections, and the votes of the House of Lords through the presence of the Bishops. By these means, it governs legislation, and makes any change in the marriage law almost impossible. It is able, also, to secure, in most cases, that a man who openly infringes the marriage law shall be dismissed from his employment, or ruined by the defection of his customers or clients. A doctor or lawyer, or a tradesman in a country town, cannot make a living, nor can a politician be in Parliament, if he is publicly known to be "immoral." Whatever a man's own conduct may be, he is not likely to defend publicly those who have been branded, lest some of the odium should fall on him. Yet so long as a man has not been branded, few men will object to him, whatever they may know privately of his behaviour in these respects.

Owing to the nature of the penalty, it falls very unequally upon different professions. An actor or journalist usually escapes all punishment. An urban working man

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can almost always do as he likes. A man of private means, unless he wishes to take part in public life, need not suffer at all if he has chosen his friends suitably. Women, who formerly suffered more than men, now suffer less, since there are large circles in which no social penalty is inflicted, and a very rapidly increasing number of women who do not believe the conventional code. But for the majority of men outside the working classes the penalty is still sufficiently severe to be prohibitive.

The result of this state of things is a widespread but very flimsy hypocrisy, which allows many infractions of the code, and forbids only those which must become public. A man may not live openly with a woman who is not his wife, an unmarried woman may not have a child, and neither man nor woman may get into the divorce court. Subject to these restrictions, there is in practice very great freedom. It is this practical freedom which makes the state of the law seem tolerable to those who do not accept the principles upon which it is based. What has to be sacrificed to propitiate the holders of strict views is not pleasure, but only children and a common life and truth and honesty. It cannot be supposed that this is the result desired by those who maintain the code, but equally it cannot be denied that this is the result which they do in fact achieve. Extra-matrimonial relations which do not lead to children and are accompanied by a certain amount of deceit remain unpunished, but severe penalties fall on those which are honest or lead to children.

Within marriage, the expense of children leads to continually greater limitation of families. The limitation is greatest among those who have most sense of parental responsibility and most wish to educate their children well, since it is to them that the expense of children is most severe. But although the economic motive for limiting families has hitherto probably been the strongest, it is being continually reinforced by another. Women are acquiring freedom—not merely outward and formal freedom, but inward freedom, enabling them to think and feel

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genuinely, not according to received maxims. To the men who have prated confidently of women's natural instincts, the result would be surprising if they were aware of it. Very large numbers of women, when they are sufficiently free to think for themselves, do not desire to have children, or at most desire one child in order not to miss the experience which a child brings. There are women who are intelligent and active-minded, who resent the slavery to the body which is involved in having children. There are ambitious women, who desire a career which leaves no time for children. There are women who love pleasure and gaiety, and women who love the admiration of men; such women will at least postpone child-bearing until their youth is past. All these classes of women are rapidly becoming more numerous, and it may be safely assumed that their numbers will continue to increase for many years to come.

It is too soon to judge with any confidence as to the effects of women's freedom upon private life and upon the life of the nation. But I think it is not too soon to see that it will be profoundly different from the effect expected by the pioneers of the women's movement. Men have invented, and women in the past have often accepted, a theory that women are the guardians of the race, that their life centres in motherhood, that all their instincts and desires are directed, consciously or unconsciously, to this end. Tolstoy's Natacha illustrates this theory: she is charming, gay, liable to passion, until she is married; then she becomes merely a virtuous mother, without any mental life. This result has Tolstoy's entire approval. It must be admitted that it is very desirable from the point of view of the nation, whatever we may think of it in relation to private life. It must also be admitted that it is probably common among women who are physically vigorous and not highly civilized. But in countries like France and England, it is becoming increasingly rare. More and more, women find motherhood unsatisfying, not what their needs demand. And more and more there comes to be a

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conflict between their personal development and the future of the community. It is difficult to know what ought to be done to mitigate this conflict, but I think it is worth while to see what are likely to be its effects if it is not mitigated.

Owing to the combination of economic prudence with the increasing freedom of women, there is at present a selective birth-rate of a very singular kind.[3] In France, the population is practically stationary, and in England it is rapidly becoming so; this means that some sections are dwindling while others are increasing. Unless some change occurs, the sections that are dwindling will practically become extinct, and the population will be almost wholly replenished from the sections that are now increasing.[4] The sections that are dwindling include the whole middle-class and the skilled artizans. The sections that are increasing are the very poor, the shiftless and drunken, the feeble-minded—feeble-minded women, especially, are apt to be very prolific. There is an increase in those sections of the population which still actively believe the Catholic religion, such as the Irish and the Bretons, because the Catholic religion forbids limitation of families. Within the classes that are dwindling, it is the best elements that are dwindling most rapidly. Working-class boys of exceptional ability rise, by means of scholarships, into the professional class; they naturally desire to marry into the class to which they belong by education, not into the class from which they spring; but as they have no money beyond what they earn, they cannot marry young, or afford a large family. The result is that in each genera-

[3] Some interesting facts were given by Mr. Sidney Webb in two letters to *The Times*, Oct. 11 and 16, 1906; there is also a Fabian tract on the subject: "The Decline in the Birth-Rate," by Sidney Webb (No. 131). Some further information may be found in "The Declining Birth-Rate: its national and international significance," by A. Newsholme, M.D., M.R.C.S. (Cassell, 1911).

[4] The fall in the death-rate, and especially in the infant mortality, which has occurred concurrently with the fall in the birth-rate, has hitherto been sufficiently great to allow the population of Great Britain to go on increasing. But there are obvious limits to the fall of the death-rate, whereas the birth-rate might easily fall to a point which would make an actual diminution of numbers unavoidable.

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tion the best elements are extracted from the working classes and artificially sterilized, at least in comparison with those who are left. In the professional classes, the young women who have initiative, energy, or intelligence, are as a rule not inclined to marry young, or to have more than one or two children when they do marry. Marriage has been in the past the only obvious means of livelihood for women; pressure from parents and fear of becoming an old maid combined to force many women to marry in spite of a complete absence of inclination for the duties of a wife. But now a young woman of ordinary intelligence can easily earn her own living, and can acquire freedom and experience without the permanent ties of a husband and a family of children. The result is that, if she marries, she marries late.

For these reasons, if an average sample of children were taken out of the population of England, and their parents were examined, it would be found that prudence, energy, intellect and enlightenment were less common among the parents than in the population in general, while shiftlessness, feeble-mindedness, stupidity, and superstition were more common than in the population in general. It would be found that those who are prudent or energetic or intelligent or enlightened actually fail to reproduce their own numbers, that is to say, they do not on the average have as many as two children each who survive infancy. On the other hand, those who have the opposite qualities have, on the average, more than two children each, and more than reproduce their own numbers.

It is impossible to estimate the effect which this will have upon the character of the population without a much greater knowledge of heredity than exists at present. But so long as children continue to live with their parents, parental example and early education must have a great influence in developing their character, even if we leave heredity entirely out of account. Whatever may be thought of genius, there can be no doubt that intelligence, whether through heredity or through education, tends to run in families, and that the decay of the families in which it is

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common must lower the mental standard of the population. It seems unquestionable that, if our economic system and our moral standards remain unchanged, there will be, in the next two or three generations, a rapid change for the worse in the character of the population in all civilized countries, and an actual diminution of numbers in the most civilized.

The diminution of numbers, in all likelihood, will rectify itself in time through the elimination of those characteristics which at present lead to a small birth-rate. Men and women who can still believe the Catholic faith will have a biological advantage; gradually a race will grow up which will be impervious to all the assaults of reason, and will believe imperturbably that limitation of families leads to hell-fire. Women who have mental interests, who care about art or literature or politics, who desire a career or who value their liberty, will gradually grow rarer, and be more and more replaced by a placid maternal type which has no interests outside the home and no dislike of the burden of motherhood. This result, which ages of masculine domination have vainly striven to achieve, is likely to be the final outcome of women's emancipation and of their attempt to enter upon a wider sphere than that to which the jealousy of men confined them in the past.

Perhaps, if the facts could be ascertained, it would be found that something of the same kind occurred in the Roman Empire. The decay of energy and intelligence during the second, third, and fourth centuries of our era has always remained more or less mysterious. But there is reason to think that then, as now, the best elements of the population, in each generation, failed to reproduce themselves, and that the least vigorous were, as a rule, those to whom the continuance of the race was due. One might be tempted to suppose that civilization, when it has reached a certain height, becomes unstable, and tends to decay through some inherent weakness, some failure to adapt the life of instinct to the intense mental life of a period of high culture. But such vague theories have

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always something glib and superstitious which makes them worthless as scientific explanations or as guides to action. It is not by a literary formula, but by detailed and complex thought, that a true solution is to be found.

Let us first be clear as to what we desire. There is no importance in an increasing population; on the contrary, if the population of Europe were stationary, it would be much easier to promote economic reform and to avoid war. What is regrettable *at present* is not the decline of the birth-rate in itself, but the fact that the decline is greatest in the best elements of the population. There is reason, however, to fear in the future three bad results: first, an absolute decline in the numbers of English, French and Germans; secondly, as a consequence of this decline, their subjugation by less civilized races and the extinction of their tradition; thirdly, a revival of their numbers on a much lower plane of civilization, after generations of selection of those who have neither intelligence nor foresight. If this result is to be avoided, the present unfortunate selectiveness of the birth-rate must be somehow stopped.

The problem is one which applies to the whole of western civilization. There is no difficulty in discovering a theoretical solution, but there is great difficulty in persuading men to adopt a solution in practice, because the effects to be feared are not immediate and the subject is one upon which people are not in the habit of using their reason. If a rational solution is ever adopted, the cause will probably be international rivalry. It is obvious that if one State—say Germany—adopted a rational means of dealing with the matter, it would acquire an enormous advantage over other States unless they did likewise. After the war, it is possible that population questions will attract more attention than they did before, and it is likely that they will be studied from the point of view of international rivalry. This motive, unlike reason and humanity, is perhaps strong enough to overcome men's objections to a scientific treatment of the birth-rate.

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In the past, at most periods and in most societies, the instincts of men and women led of themselves to a more than sufficient birth-rate; Malthus's statement of the population question had been true enough up to the time when he wrote. It is still true of barbarous and semi-civilized races, and of the worst elements among civilized races. But it has become false as regards the more civilized half of the population in Western Europe and America. Among them, instinct no longer suffices to keep numbers even stationary.

We may sum up the reasons for this, in order of importance, as follows:

(1) The expense of children is very great if parents are conscientious.

(2) An increasing number of women desire to have no children, or only one or two, in order not to be hampered in their own careers.

(3) Owing to the excess of women, a large number of women remain unmarried. These women, though not debarred in practice from relations with men, are debarred by the code from having children. In this class are to be found an enormous and increasing number of women who earn their own living as typists, in shops, or otherwise. The war has opened many employments to women from which they were formerly debarred, and this change is probably only in part temporary.

If the sterilizing of the best parts of the population is to be arrested, the first and most pressing necessity is the removal of the economic motives for limiting families. The expense of children ought to be borne wholly by the community. Their food and clothing and education ought to be provided, not only to the very poor as a matter of charity, but to all classes as a matter of public interest. In addition to this, a woman who is capable of earning money, and who abandons wage-earning for motherhood, ought to receive from the State as nearly as possible what she would have received if she had not had children. The only condition attached to State maintenance of the mother and

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the children should be that both parents are physically and mentally sound in all ways likely to affect the children. Those who are not sound should not be debarred from having children, but should continue, as at present, to bear the expense of children themselves.

It ought to be recognised that the law is only concerned with marriage through the question of children, and should be indifferent to what is called "morality," which is based upon custom and texts of the Bible, not upon any real consideration of the needs of the community. The excess women, who at present are in every way discouraged from having children, ought no longer to be discouraged. If the State is to undertake the expense of children, it has the right, on eugenic grounds, to know who the father is, and to demand a certain stability in a union. But there is no reason to demand or expect a life-long stability, or to exact any ground for divorce beyond mutual consent. This would make it possible for the women who must at present remain unmarried to have children if they wished it. In this way an enormous and unnecessary waste would be prevented, and a great deal of needless unhappiness would be avoided.

There is no necessity to begin such a system all at once. It might be begun tentatively with certain exceptionally desirable sections of the community. It might then be extended gradually, with the experience of its working which had been derived from the first experiment. If the birth-rate were very much increased, the eugenic conditions exacted might be made more strict.

There are of course various practical difficulties in the way of such a scheme: the opposition of the Church and the upholders of traditional morality, the fear of weakening parental responsibility, and the expense. All these, however, might be overcome. But there remains one difficulty which it seems impossible to overcome completely in England, and that is, that the whole conception is anti-democratic, since it regards some men as better than others, and would demand that the State should bestow a better

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education upon the children of some men than upon the children of others. This is contrary to all the principles of progressive politics in England. For this reason, it can hardly be expected that any such method of dealing with the population question will ever be adopted in its entirety in this country. Something of the sort may well be done in Germany, and if so, it will assure German hegemony as no merely military victory could do. But among ourselves we can only hope to see it adopted in some partial piecemeal fashion, and probably only after a change in the economic structure of society which will remove most of the artificial inequalities that progressive parties are rightly trying to diminish.

So far we have been considering the question of the reproduction of the race, rather than the effect of sex-relations in fostering or hindering the development of men and women. From the point of view of the race, what seems needed is a complete removal of the economic burdens due to children from all parents who are not physically or mentally unfit, and as much freedom in the law as is compatible with public knowledge of paternity. Exactly the same changes seem called for when the question is considered from the point of view of the men and women concerned.

In regard to marriage, as with all the other traditional bonds between human beings, a very extraordinary change is taking place, wholly inevitable, wholly necessary as a stage in the development of a new life, but by no means wholly satisfactory until it is completed. All the traditional bonds were based on *authority*—of the king, the feudal baron, the priest, the father, the husband. All these bonds, just because they were based on authority, are dissolving or already dissolved, and the creation of other bonds to take their place is as yet very incomplete. For this reason, human relations have at present an unusual triviality, and do less than they did formerly to break down the hard walls of the Ego.

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The ideal of marriage in the past depended upon the authority of the husband, which was admitted as a right by the wife. The husband was free, the wife was a willing slave. In all matters which concerned husband and wife jointly, it was taken for granted that the husband's fiat should be final. The wife was expected to be faithful, while the husband, except in very religious societies, was only expected to throw a decent veil over his infidelities. Families could not be limited except by continence, and a wife had no recognised right to demand continence, however she might suffer from frequent children.

So long as the husband's right to authority was unquestioningly believed by both men and women, this system was fairly satisfactory, and afforded to both a certain instinctive fulfilment which is rarely achieved among educated people now. Only one will, the husband's, had to be taken into account, and there was no need of the difficult adjustments required when common decisions have to be reached by two equal wills. The wife's desires were not treated seriously enough to enable them to thwart the husband's needs, and the wife herself, unless she was exceptionally selfish, did not seek self-development, or see in marriage anything but an opportunity for duties. Since she did not seek or expect much happiness, she suffered less, when happiness was not attained, than a woman does now: her suffering contained no element of indignation or surprise, and did not readily turn into bitterness and sense of injury.

The saintly self-sacrificing woman whom our ancestors praised had her place in a certain organic conception of society, the conception of the ordered hierarchy of authorities which dominated the middle ages. She belongs to the same order of ideas as the faithful servant, the loyal subject, and the orthodox son of the Church. This whole order of ideas has vanished from the civilized world, and it is to be hoped that it has vanished for ever, in spite of the fact that the society which it produced was vital and in some ways full of nobility. The old order has been de-

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stroyed by the new ideals of justice and liberty, beginning with religion, passing on to politics, and reaching at last the private relations of marriage and the family. When once the question has been asked: "Why should a woman submit to a man?" when once the answers derived from tradition and the Bible have ceased to satisfy, there is no longer any possibility of maintaining the old subordination. To every man who has the power of thinking impersonally and freely, it is obvious, as soon as the question is asked, that the rights of women are precisely the same as the rights of men. Whatever dangers and difficulties, whatever temporary chaos, may be incurred in the transition to equality, the claims of reason are so insistent and so clear that no opposition to them can hope to be long successful.

Mutual liberty, which is now demanded, is making the old form of marriage impossible. But a new form, which shall be an equally good vehicle for instinct, and an equal help to spiritual growth, has not yet been developed. For the present, women who are conscious of liberty as something to be preserved are also conscious of the difficulty of preserving it. The wish for mastery is an ingredient in most men's sexual passions, especially in those which are strong and serious. It survives in many men whose theories are entirely opposed to despotism. The result is a fight for liberty on the one side and for life on the other. Women feel that they must protect their individuality; men feel, often very dumbly, that the repression of instinct which is demanded of them is incompatible with vigour and initiative. The clash of these opposing moods makes all real mingling of personalities impossible; the man and woman remain hard, separate units, continually asking themselves whether anything of value to themselves is resulting from the union. The effect is that relations tend to become trivial and temporary, a pleasure rather than the satisfaction of a profound need, an excitement, not an attainment. The fundamental loneliness into which we are

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born remains untouched, and the hunger for inner companionship remains unappeased.

No cheap and easy solution of this trouble is possible. It is a trouble which affects most the most civilized men and women, and is an outcome of the increasing sense of individuality which springs inevitably from mental progress. I doubt if there is any radical cure except in some form of religion, so firmly and sincerely believed as to dominate even the life of instinct. The individual is not the end and aim of his own being: outside the individual, there is the community, the future of mankind, the immensity of the universe in which all our hopes and fears are a mere pinpoint. A man and woman with reverence for the spirit of life in each other, with an equal sense of their own unimportance beside the whole life of man, may become comrades without interference with liberty, and may achieve the union of instinct without doing violence to the life of mind and spirit. As religion dominated the old form of marriage, so religion must dominate the new. But it must be a new religion, based upon liberty, justice and love, not upon authority and law and hell-fire.

A bad effect upon the relations of men and women has been produced by the romantic movement, through directing attention to what ought to be an incidental good, not the purpose for which relations exist. Love is what gives intrinsic value to a marriage, and, like art and thought, it is one of the supreme things which make human life worth preserving. But though there is no good marriage without love, the best marriages have a purpose which goes beyond love. The love of two people for each other is too circumscribed, too separate from the community, to be by itself the main purpose of a good life. It is not in itself a sufficient source of activities, it is not sufficiently prospective, to make an existence in which ultimate satisfaction can be found. It brings its great moments, and then its times which are less great, which are unsatisfying because they are less great. It becomes, sooner or later, retrospective, a tomb of dead joys, not a well-spring

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of new life. This evil is inseparable from any purpose which is to be achieved in a single supreme emotion. The only adequate purposes are those which stretch out into the future, which can never be fully achieved, but are always growing, and infinite with the infinity of human endeavor. And it is only when love is linked to some infinite purpose of this kind that it can have the seriousness and depth of which it is capable.

For the great majority of men and women, seriousness in sex relations is most likely to be achieved through children. Children are to most people rather a need than a desire: instinct is as a rule only consciously directed towards what used to lead to children. The desire for children is apt to develop in middle life, when the adventure of one's own existence is past, when the friendships of youth seem less important than they once did, when the prospect of a lonely old age begins to terrify, and the feeling of having no share in the future becomes oppressive. Then those who, while they were young, have had no sense that children would be a fulfilment of their needs, begin to regret their former contempt for the normal, and to envy acquaintances whom before they had thought humdrum. But owing to economic causes it is often impossible for the young, and especially for the best of the young, to have children without sacrificing things of vital importance to their own lives. And so youth passes, and the need is felt too late.

Needs without corresponding desires have grown increasingly common as life has grown more different from that primitive existence from which our instincts are derived, and to which, rather than to that of the present day, they are still very largely adapted. An unsatisfied need produces, in the end, as much pain and as much distortion of character as if it had been associated with a conscious desire. For this reason, as well as for the sake of the race, it is important to remove the present economic inducements to childlessness. There is no necessity whatever to urge parenthood upon those who feel disinclined to it, but

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there is necessity not to place obstacles in the way of those who have no such disinclination.

In speaking of the importance of preserving seriousness in the relations of men and women, I do not mean to suggest that relations which are not serious are always harmful. Traditional morality has erred by laying stress on what ought not to happen, rather than on what ought to happen. What is important is that men and women should find, sooner or later, the best relation of which their natures are capable. It is not always possible to know in advance what will be the best, or to be sure of not missing the best if everything that can be doubted is rejected. Among primitive races, a man wants a female, a woman wants a male, and there is no such differentiation as makes one a much more suitable companion than another. But with the increasing complexity of disposition that civilized life brings, it becomes more and more difficult to find the man or woman who will bring happiness, and more and more necessary to make it not too difficult to acknowledge a mistake.

The present marriage law is an inheritance from a simpler age, and is supported, in the main, by unreasoning fears and by contempt for all that is delicate and difficult in the life of the mind. Owing to the law, large numbers of men and women are condemned, so far as their ostensible relations are concerned, to the society of an utterly uncongenial companion, with all the embittering consciousness that escape is practically impossible. In these circumstances, happier relations with others are often sought, but they have to be clandestine, without a common life, and without children. Apart from the great evil of being clandestine, such relations have some almost inevitable drawbacks. They are liable to emphasize sex unduly, to be exciting and disturbing; and it is hardly possible that they should bring a real satisfaction of instinct. It is the combination of love, children, and a common life that makes the best relation between a man and a woman. The law at present confines children and

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a common life within the bounds of monogamy, but it cannot confine love. By forcing many to separate love from children and a common life, the law cramps their lives, prevents them from reaching the full measure of their possible development, and inflicts a wholly unnecessary torture upon those who are not content to become frivolous.

To sum up: The present state of the law, of public opinion, and of our economic system is tending to degrade the quality of the race, by making the worst half of the population the parents of more than half of the next generation. At the same time, women's claim to liberty is making the old form of marriage a hindrance to the development of both men and women. A new system is required, if the European nations are not to degenerate, and if the relations of men and women are to have the strong happiness and organic seriousness which belonged to the best marriages in the past. The new system must be based upon the fact that to produce children is a service to the State, and ought not to expose parents to heavy pecuniary penalties. It will have to recognise that neither the law nor public opinion should concern itself with the private relations of men and women, except where children are concerned. It ought to remove the inducements to make relations clandestine and childless. It ought to admit that, although lifelong monogamy is best when it is successful, the increasing complexity of our needs makes it increasingly often a failure for which divorce is the best preventive. Here as elsewhere, liberty is the basis of political wisdom. And when liberty has been won, what remains to be desired must be left to the conscience and religion of individual men and women.

BERTRAND RUSSELL.

CAMBRIDGE, ENGLAND.

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FEMINISM AND SEX ETHICS.

ELSIE CLEWS PARSONS.

THE lapse of the proprietary theory about woman was the great contribution of the nineteenth century to sex ethics. But the full consequence of that lapse was by no means realized even by the end of the century nor was a related issue of feminism, the inclusion of woman, an issue quite as significant as her emancipation. To these contributions to the ethics of sex the twentieth century is adding another, its own distinctive contribution. I refer to the theory that for women as for men mating and parenthood are separable facts.

Of this theory feminism is a logical as well as an historical antecedent, a relationship that feminists, particularly the early feminists, have denied because they so greatly disliked the terms of opprobrium in which it was pointed out to them. The charge of "free love" made them, so to speak, see red. They took it as the insult it was intended. Castigation for an hypothetical wantonness obscured for them the issue—a little anti-feminist strategy far from novel. And so the bugaboo of an imputed promiscuity scared the fugitives back into one corner of the proprietary fold.

And there they have stayed accumulating, let me say incidentally, a good deal of sex resistance and sex bitterness. Because one of their natural outlets was closed to them, and this the outlet of all others that would have led them into a community of interests with the other sex, their energy and vehemence in other directions were intensified. Feminism narrowed in became subject to sex antagonism. Instead of broadening out to take in the sex relationship it merely stared at the closed door and denounced men.

But the door is now opening, thanks less to feminism, it must be admitted, than to other factors, thanks shall we

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say to progress in the practice of medicine and thanks to economic pressure, economic pressure upon men as well as upon women. "The spacing of babies," late marriage, childless marriage, persistent celibacy, are the facts that, left detached, are troublesome enough to call for an interpretation, to make people, as we say, sit up and think. The conclusion they are reaching is the theory the feminists ran away from years ago, the theory that the sex relationship should be distinguished from the parental relationship, distinguished I mean, of course, in theory, not necessarily in concrete life.

The consequences of this theory to sex ethics are vital and fundamental. To begin with it facilitates clearing away the dead wood of the proprietary theory of the family. Archaisms like parental consent to marriage, suits for seduction, for breach of promise, for the restitution of conjugal rights, such vestiges of parental or marital proprietorship are more easily displaced. And then in many ways appeal for the rights of the unborn ceases to confuse the appeal for the rights of the mating woman or man. Mating may at last set up its own standards.

Paramount among them is the standard of reciprocity. Desire for responsiveness replaces the desire for proprietorship. Love-making becomes mutual, a matter of mutual satisfaction, of mutual devotion.

Important to responsiveness is candor. Seduction in love-making is to be redefined. A man may be seduced, it is now realized, as well as a woman. Any deception in courtship as to what either man or woman asks or offers is seduction. Desires for offspring, for social position, for property or support, for the momentary satisfaction of passion, all these desires if detached and therefore significant of a partial, one-sided relationship, should at least be overt, acknowledged. The relationship as far as it goes should be frank, as frank in marriage, shall we say, as it is now in prostitution.

And it should be sincere, unsentimental. When change comes it should be met, not lied about or shirked. Life

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is change and any live personal relation is a changing relation. In so far as marriage to-day hypothecates an unchanging relationship it is an impersonal relationship, a relationship of status, not a relationship between personalities.

And so permanence will cease to be the final criterion of virtue in mating. It is of course the criterion society is fondest of because of the guaranty it affords every one against readjustment. Society does not like to have the associations it makes disturbed. For its own peace of mind it would have people stay where it puts them. Impermanence in mating is too upsetting to society to be accounted anything but unworthy, base, to be precluded at any price, even at the price of sincerity, even at the price sometimes of all that makes the relationship worthy.

As one looks ahead permanence in mating is seen to lose its very egregious place. Lasting love will be accounted a good, like lasting health or energy or happiness. But, as in health or happiness, the enduring character of it will not be considered of itself, will not be its justification, as it were, for existing. Its loss will be considered a disaster, a tragedy, not an offense; a misfortune society would regret or pity, not condemn or revile.

In place of permanence we shall have then as the criterion of passionate love, reciprocity, frankness, and sincerity, and we shall have integrity, whole-heartedness. Integrity, a full and rich relationship, will be far more than at present the criterion of mating. We subscribe now to that standard, but in words merely. For we suffer the existence of almost insuperable obstacles to integrity, we welcome conditions which make for a meagre, partial, and impoverished relationship. The daily familiarity we so insist upon in marriage would of itself take the edge off any spiritual intimacy, dulling responsiveness. A degree of loneliness is essential to fervor. And, for many of us, other personal relationships. It is only when monogamy is an observance, not a spiritual relationship, that it is dependent upon a continuous and exclusive intercourse.

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In conclusion let me say that one would not be didactic or oracular about the nature of the mating that is to set up its own standards. Its spiritual character is not easy to foresee; there is so little in the past to suggest it. Rarely has mating been theorized about for itself, rarely even by those masked figures of incipient moralities, the novelists. For the most part it has been considered for "the good of society," *i.e.*, the good of the Elders or in latter days for the good of the unborn. That it is not a separable good is even now the stand of the Elders, their last stand in self-defense.

ELSIE CLEWS PARSONS.

NEW YORK CITY.

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THE PESSIMISM OF JESUS.

CHARLES GRAY SHAW.

IN THE perennial attempt to come to an understanding with the character of Jesus, it is remarkable that the points of view should have been so varied. There is one Moses and one Saint Paul, one Dante and one Shakespeare, but there have been many Christs. Each age takes its ideals, and its prejudices, too, and proceeds to render them incarnate in the person of one who at heart was naïve and straightforward. The adolescent and pastoral Jesus of the Basilica is one thing, the weary, cadaverous Christ of the Gothic another; Angelo makes him muscular, Raphael fleshy; modern art makes his countenance appear more pleasant than convincing. As traditional Messiah, Jesus seems to be the over-fulfillment of prophecy; as moralist he appears too good for all ethical categories; as God, his head rises above the church; as social leader and philanthropist, his spiritual attributes are such as to discourage the enthusiast who tries to drive his Jesus into the dark corner of city life. Both religion and irreligion have held up their little cups which could hold just so much, but the abundant essence of Jesus has scorned their shallow brims and fallen to the earth. In the midst of these misconceptions due to the ready application of so many half-truths to a thoroughly integrated character, we cast about in the confused culture-consciousness of our own age with the faint hope of finding some ideal which may contain this dominating figure, some distinction which applies to his teaching. Was Christ of classic perfection or was he romantic and decadent? Did he make his home in the social order, or did he take up his solitary abode in the anti-social? Does he belong to optimism or to pessimism?

It is peculiar to the character of Jesus to be surprising to the specialist, to be disconcerting to him who would

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indulge in firm definition. Jesus was on the side of neither militarism nor industrialism, so that the prophet's pathetic contrast between sword and plough-share, spear and pruning hook has no meaning for him who came with the sword in one hand, the banner of peace in the other, who listened for rumors of war while he promised peace and rest to mankind. In the same manner, the Man of Nazareth refrained from taking his stand with either the intellectualists or the moralists, whence it becomes impossible to make use of their trite distinctions and thus place him here or there. Now a moralist, he suddenly appears as theoretical immoralist; here a rationalist, he immediately takes his stand there with the irrationalists. The perfection of Jesus seems then to amount to saying that he is at all times himself; he may sympathize with petty systems, but he has no intention of sharing their half-heartedness. In the perfection, one finds the august pessimism of Jesus.

The use of such a term as 'pessimism' in an age which reeks with optimistic sentiment and in a country which is too busy to reflect upon the meaning of words and thoughts is likely to cause some annoyance; yet, there is a depth and an inclusiveness about the term which would seem to make it eminently applicable to the character of the Galilean seer. He who is wounded by the suggestion that Jesus was strangely drawn by the idea of the Nought, the Unhappy, and the Bad may make the hazardous experiment of attributing to the character of Jesus the optimistic attributes of human thinking, whereupon he will discover that the ideals of Leibnitz and Browning are but poor anodynes for the heart of him who was acquainted with grief and alive to the spirit of contradiction in life. To be optimistic, one must be so uncritical as to accept life and the universe at the face-values; now, the desire to take all things for granted was as far from the manifest purpose of Jesus as the acceptance of a Judean tetrarchy under the Roman emperor. Then, to be an optimist, one must indulge a certain bourgeois blindness to the existence of the remote and ideal, where imperceptible and

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useless things are in full bloom, as in a hanging-garden. Jesus was so blue-eyed and far-sighted as to see through the optimities of the immediate order of things in nature and humanity. In a word, Jesus had no philosophy of success, no word of praise or furtherance for him who thought to solve the problem of life by any method of exteriorization. On the other hand, Jesus was charmed when he met some sincere child of humanity who, through sin or sorrow, had fallen back upon the elements of spiritual life within his or her own soul. Hence, it is not the 'tired business man,' but he who is world-weary in the midst of life's chaos who has a right to expect something of the Evangel.

At the present hour, Galilean pessimism seems so hopeless that we prefer not to eat and drink at his table of black bread and bitter wine; we are content to gather up the little crumbs of comfort that may fall unheeded to the floor. It was perhaps to expect too much of the western world when it was asked to accept the mysticism of the Orient, and the pagan, practical spirit of the Occident may perhaps be praised for the manner in which it has tried to adjust its life-ideals to a pessimistic religion wholly alien to its own genius. When we recall how Jesus, in his own *vanitas vanitatum*, placed his affair upon nothing, we wonder how the realism and utilitarianism of the western world could tolerate him any more perfectly than did Herod and Pilate. Yet, in all this halfheartedness, there is a dim presentiment that Jesus stood in uniquely representative relations, not only to his own age, but to the whole history of humanity, so that we cling to his word and hold on grimly when the waves of his pessimism break over our heads. That is, we accept that Gospel, not because of its pessimism, but in spite of its pessimism, we affect to enjoy the Sermon on the Mount, but read very rapidly when its pessimism brings us face to face with the ideals of non-resistance and non-resentment.

The manner in which pessimism came to be the leading motive of the Gospel is discoverable in the severe principle of division which runs right through the teaching of Jesus.

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Fields of life which had previously rejoiced in a naïve sense of unity and completeness were divided against themselves; hence arose the pessimistic dualism of Finite and Infinite, Immediate and Remote, Outer and Inner, Bad and Good. Seek no treasure in the finite order, fear not those who kill only the body, fear not to cut off the hand or pluck out the eye, if they offend the interior spirit, hate the life of sense and love the life of spirit; such was the unearthly 'transvaluation of values' wrought by the pessimism of Jesus. In the ardent pursuit of this pessimism, Jesus never thought of any Laodicean compromise, of any practical meliorism; hence, we cannot invoke the powers of comparative religion, still less indulge in the social science of religion, with the aim of showing how Jesus, like Moses and Zarathustra, sought to combine holiness with hygiene and husbandry. Nor did any fatal optimism taint the sincere message of the Gospel, and thus persuade Jesus to play the part of Confucius or the Brahman in the adjustment of domestic and political relationships. No, Jesus had made overtures to the Nought, and had so linked fortune with the romanticism of the inner life that he could not suffer his Gospel to entangle itself with anything provincial or practical.

The individuality of Jesus has not been understood by us, because our culture has been unable to supply it with a proper background; not that this background should be black, but it should have a depth sufficient to permit a due perspective, while it should be toned by an art which knows how to detach the figure from its setting. Set back against the wall of social ethics, the luxuriant figure of Jesus looks like an Egyptian silhouette; the dimensional fulness and warm coloring, as one sees in Rubens for example, are painfully wanting. Catholicism has made Christ a babe in arms with the ecclesiastical result of putting him in the power of the church; Protestantism, relying upon the intuitions of Luther and Calvin, has made a reformer of him, as though he were in no wise different from John the Baptist. Scholasticism was persuaded that there was something metaphysical about Jesus; Protest-

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antism was equally insistent upon the moralistic interpretation of his character. Doubtless there is truth in the Christ-idea, doubtless there is as much worth; but is there not also an impression which may be appreciated by pessimistic art? The Either-Or of logic, with its distinction of True and False, and the *aut-aut* of ethics, with its contrast of Good and Bad, seem to obscure the meaning of that totalizing impression which the sincere mind receives when it comes face to face with such unique personality. To place Jesus in the atmosphere of demonstrable truth and defensible goodness is to cloud the meaning of his character; so that, rather than submit to these scientific and social syntheses, one would rather relegate him to the elemental forms of the world as an individual in the midst of an interesting chaos. Adopt any traditional criterion of truth, and the idea of Christ will be sublimely false; consider him in the light of conventional goodness, and his attitude on almost any of the questions which he met, law, taxation, wine, woman, warfare, will prove quite disconcerting. Abandon all hope of systematizing the mind of Jesus and surrender yourself to mere impressionism, and the pathetic impression of Jesus as such becomes convincing and complete.

Connoisseurs of Christianity have ever been rare, so that, when we deplore the lack of appreciation from which the person of Jesus suffers to-day, we should realize that the situation is far from being exceptional. Our very habits of dress are such as to threaten us with a false view of one who went about with long hair, loose robe, and feet bare save for sandals. Then, the calculating forms of our western culture and civilization further hinder us from appreciating the meaning of a life which was more natural than that of even the bird or the fox, while the principles of his teaching were one with the wind and the rain. Protestant Christologists were doubtless sincere, but then they always expected Jesus to advance the cause of their party, whence they are forced to view Jesus in their own narrow way. The Deists were as anxious to transcend Protes-

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tantism as the Protestants had been to over-reach Catholicism, but the Deists had no artistic intuitions, hence their attempts at Christology produced only so much wooden rationalism. Strauss had imagination, but what could he do with it when he was forced to premise the Hegelian dialectic? Renan was a self-enamored dilettant who thought he was writing a *Vie de Jésu* when he was only turning the panorama of his own cynical soul. Tolstoy was in a position to comprehend the pessimism of Jesus, but at the precise moment when he was making his discovery the Slavonic and Sadducean entered to spoil the naïve impression. Ruskin was serious enough and sufficiently an artist to describe the Christ-countenance, but that 'ethics of the dust' which always clouds the British mind proved fatal to his intuition. Ibsen was as near Jesus psychologically as Pilate was physically, but the Ibsenesque lack of tenderness prevented him from seeing the invisible. Dostoievsky, who was driven to the Siberia of his soul, has entertained the most perfect vision of Christ granted to the modern mind; it is true that the violence of this artist prevented him from enjoying what he saw in the light, although it did not rob him of the essential meaning of his vision. Nietzsche, whose soul was filled with Gadarene swine, is another one who has been affected by the person of Jesus; although Nietzsche had no day of Damascus, although he was disobedient to the heavenly vision, he has seen the 'terrible' qualities of the Gospel, so that theology has begun to liken him to Saint Paul.

With his commendable erudition and unhappy habit of plagiarism, Nietzsche has done more than any other modern to bring the ideas of Jesus to the light; while he may appear to be the worst enemy that Christianity has ever known, no sincere Christian has the right to regret that he was ever born. The hatred for Christianity which Nietzsche expressed through his egoism is more enlightening than the 'love' which our contemporary theologian seeks to express by means of his social ethics. Nietzsche is of supreme significance in pointing out the fact that Jesus was inter-

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ested in the question of value rather than in the idea of goodness. Ritschl had an inkling of this, but his anxiety for dogmatics took him out of Galilee and left him in his own system-loving Germany. Nietzsche missed the point when, in basing all his calculations upon the ideal of strength, he failed to see, as Ernest Hello did not, that there is a strength due to want as well as that assertiveness which comes from the sense of excess. Viewed from the standpoint of want, Jesus was as strong as Samson among the Judges; had he not been so, Nietzsche would never have wished to oppose him. The pity is that Nietzsche's paranoia could not have affected him the way that epilepsy took hold of Dostoievsky's Prince Myshkin, in *The Idiot;* had Nietzsche, in those exalted moments when, like the Idiot, he beheld the 'highest synthesis of life,' been in a condition to lose the meaner qualities of his nature, he would have given to the world a memorable picture of the one whom he sought to despise. As it was, his 'pessimism of strength' made it possible for him to explain to the world the inward meaning of a character which he himself could not justify.

The fine pessimism of Jesus was due to his unwillingness to relegate the soul within to the world without. Plato had overcome this difficulty by reducing the needs of the soul to a minimum, the realities of the world to a maximum, whereby the spiritual and sensuous were within hailing distance of each other. In the classic spirit, Pagan art had blended the extremes of existence in the formal, typical beauty so obvious in Greek sculpture. In classic tragedy, there was the suspicion that inner and outer are not perfectly harmonious, but the discrepancy was not so severe as to make the tragic artist demand a re-statement of the whole human problem. Now, in the intuition of Jesus, there is nothing in the world-whole that can equal that uniqueness which is within, 'what shall it profit a man if he gain the whole world and lose his own soul?' Because of this pathetic contrast, this cosmic arrangement in which no common denominator of sensuous and spiritual is to be

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found, Jesus decides against the optimism which places man in the world as a thing among things, and decides for a pessimism which drives the soul back within itself. Optimism is anxious to be loyal to the world, so that it cannot easily understand how, when Jehovah had pronounced his creation 'very good,' Jesus should view it as very bad. But, Jesus was anxious to be loyal to the soul, whence he repudiates the world, and that without qualm or regret.

Ibsen makes use of 'indignation pessimism' to indicate the feeling of wrath which one must entertain when he observes that on earth human ideals are not eternal; with Jesus, this indignation pessimism arises when Jesus perceives that the world, not in this or that age, but at all times, is unworthy of the soul. Jesus was not wanting in a sense of metaphysical or moral responsibility when he turned away from the exterior order of things in both nature and humanity; no, when he was allowed to indulge his own interpretation of things and persons, he showed extraordinary appreciation of the spectacle which was passing before him. In his pessimism, he found it necessary to proceed from the soul, from the self outward toward the world and the social state; in doing this, Jesus was ever discontented with the way in which the things of nature and the subjects of the state had been organized into artificial systems. The naive perception of birds and flowers, of children and sad people pleased him and won his approval, but the metaphysical and moral arrangement of such objects into so many systems annoyed him and aroused his indignation. "If I have once been allowed to be conscious that 'I am,'" said Dostoievesky's hero, "it does not matter to me if there are mistakes in the construction of the world." The sentence of Jesus says this much more emphatically; from it we learn that Jesus wished the individual to say what Jehovah said, "I am that I am."

In his individualistic pessimism, Jesus upheld a noble disloyalty to the world. In the quest of the self, which

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Jesus took up so romantically, Jesus made use of a certain kind of decadence-principle which the nineteenth century has sought so vainly to imitate. Around the shores of the Mediterranean, man had begun to feel that life was played out; Aristotle had closed the book of Grecian culture, the Romans were saying *nil admirari*, Alexandrine culture was bookish, Byzantine mystical. Where this decadence assumed the form of debauchery, it could not have elicited the sympathy of Jesus, had he been acquainted with it; but where it suggested that life might after all be something interior, he could have given it limited approval. The decadence-principle of Jesus was qualitatively distinct from that of the Pagan world; moreover, that which with others of this period was simply contempt for the world was with Jesus an extraordinary enthusiasm for the soul. This egoistic enthusiasm might have assumed the æsthetic form, whence the self had become a 'beautiful soul'; had Jesus surrendered the self to truth, the soul would have been but so much metaphysical soul-stuff; it was, however, the idea of worth which served Jesus in bringing about the emancipation of the human self from the things of the world. The soul has about it that intrinsic value which gives it dignity; from this position of self-dignity, the soul cannot be dislodged by anything in the exterior order.

All Christians are ready to admit that Jesus was in no sense wordly, but they are not so ready to follow his doctrine to its individualistic end and thus conclude that he was equally unsocial. An openminded view of the teaching of Jesus, however, has no excuse for such halfheartedness; hence, such a view must conclude that Jesus was at once anti-natural and anti-social. It may indeed appear that, in the intuition of Jesus, there was still some way in which the self might be related to a sincere view of the world, to an essential conception of humanity; but our ordinary views of nature and society are insufficient to express the meaning of exteriority which Jesus attributed to the human self. In the morale of Jesus, one must hate, not only the things of the world, but father and mother,

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wife and child, brother and sister. At the same time, one must realize the value of the self; God, so he reasoned, could see value in the sparrow that brought less than a farthing in the market; why, then, should not man see as much worth in the soul as in the sparrow? The sparrow-like souls of men are on the labor-market to-day, but according to the indignation-individualism of Jesus, one such sparrow-soul is more than equal to the whole billion-dollar market, just as the soul of one soldier is more than equal to all the issues of the present war among the industrial nations of the earth. Was Jesus suffering from 'egomania,' was he like Stirner, or Ibsen, or Strindberg? Because we are unwilling to admit the justness of such an unfortunate conclusion, we persist in that absurdly social interpretation of the Gospel for which Union Seminary and the University of Chicago have become famous.

The indignation-individualism could not endure the things of the world, even where it did not wholly sever its connection with that which Villiers de L'Isle Adam called 'the old, complicated exteriority.' Jesus could not bring himself to believe that the self was dependent upon or in communion with the world of things; for him nature was no more a setting than it was a background for Michel Angelo or a *milieu* for Corneille. Perhaps, like Corot, Jesus would tolerate the landscape as long as it seemed to provide a place for the spiritual life of mankind, but toward nature large and raw Jesus was cavalier-like in his suggestion that the soul might uproot trees, remove mountains, and smile at the destruction of all things. According to the symbolism of the Gospels, as with the symbolism of contemporary poetry, Jesus was ready to say, "The world does not exist for me—*le monde n'existe pas pour moi.*" Nevertheless, Jesus was somewhat extravagant in his praise of certain types of natural objects, although these were usually small and spirituelle, like birds and foxes, lilies and vines, fields and hedged-vineyards. In his attitude toward mankind, Jesus was somewhat *genre* in his art, whence children are preferred to men of the world,

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while the poor and meek, merciful and mournful are exalted above princes and judges. In his æstheticism, Jesus made startling use of parabolic symbolism, whence he attacked the established order and sought to evince the idea of the Kingdom of God. In so doing, Jesus did not imitate nature, but made nature imitate his art.

Intolerant with the things of the world, Jesus was no more indulgent with the attempts which men had made to reduce the world to definite forms; his anti-social individualism reveals a peculiar antipathy to Law. When Ruskin read, The law was given by Moses, but grace and truth came through Jesus Christ, he asked, "Was the law not gracious, was it not true?" No, it was neither, so that Jesus had to search a long dreary scroll before he could pause with approval; even then, his study yielded him but two simple commandments, the love of God and the love of man. Even here, Jesus paused but a moment; then, he purged human love of both hate and lust, while he expanded the love of God into his ideals of non-resistance and non-resentment. To Jesus, these nihilistic notions seemed obvious; to the Christian, non-resistance and non-resentment have been a pair of dark sayings. All exalted religion has indulged in the same idealism, so that, when a Jesus, a Laotze, a Gautama, or a Solomon attempts to base his system upon that which in the world is imperceptible and that which in society is inaccessible, he invariably makes use of just such passivistic irony. In our business-like western world, with its norm of natural rights, there is no room for any nihilistic non-resentment; Schopenhauer and Tolstoy have made due place for it, but it was their pessimism which gave them courage.

In transcending the things and institutions of the world, Jesus produced marvelous effects with middle-class morality; like Dostoievsky, he seemed to say, "There is no crime"; with him he seemed to agree in affirming, "Compassion is the only law of human existence." In the midst of this new conception of life, this inward and aristocratic conception which has meant so much to Ernest Hello,

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Jesus was Ibsenesque in his insistence upon truth. Without any idea of crime, Jesus was convinced of the existence of wrong, whence Nietzsche gives him the credit of having unearthed the 'worm of sin.' But, at this point, Nietzsche, who was annoyed at the originality of Jesus, made the mistake of thinking that Jesus was wont to condemn the sin of strength, when the truth of the matter is that Jesus usually condemns that spiritual dullness which leads to cruelty and the lie. Murder and adultery do not amaze him; at war and the rumor of war, he is not dismayed; but, failure to see the truth and to tell the truth seem to anger him. For those who are dull there is no hope; they commit the unpardonable sin of failing to recognize the truth. Like Socrates, Jesus thus makes knowledge the pivotal point in all morality; like Buddha, he insists that such saving insight comes from compassion. The earthly Parsival stands in need of enlightenment; this can come through compassion alone. If, now, the light that is within one be darkness, how great is that darkness!

The distinction of good and bad, so dear to the mediocre mind, has no place in the pessimism of Jesus. "Why callest thou me good; which one of you convinceth me of sin?" Jesus was anxious to put an end to this bandying about of the terms good and bad. In order to make himself plain, Jesus indulged in a Copernican revolution, whence good and bad exchanged places in the skies. First of all, Jesus had no desire to place the seal of his approval upon those who were in the position of earthly greatness, whence he dismisses Caesar with a witticism concerning the Caesarian image on the coin, calls Herod a fox, and treats Pilate with silence. Parties came in for similar condemnation. Pharisaism, which had produced its Saint Paul, for example, was submitted to the most strident form of criticism by him who showed his scorn by avoiding Scribes and Pharisees and consorting with Publicans and sinners. "The damnable generation of Scribes and Pharisees" had been conventional enough to cleanse the outside of the cup, but it is always the true inwardness which claims the attention of

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Jesus. The 'righteousness' of the conforming ones seemed ghastly to Jesus, just as social 'ghosts' made Ibsen shudder; fair as a sepulchre without, such righteousness was dead and putrefying within. There is no thought of the meliorism peculiar to 'social Christianity,' no ideal of 'civic righteousness'; there is nothing but pessimistic condemnation for the morality of mediocrity.

The direct application of pessimism to people and parties was no less stringent when applied to civic centres. In the midst of his condemnation, Jesus was amazed at the way the sons of men had missed the point in life; that which was an open secret with babes and sucklings, was strangely hidden from the wise and prudent. In his moral art, Jesus made bold transitions into remote keys to produce new and interesting dissonances for men's ears. When the new moral music was heard in the streets of certain proud cities, the effect was most startling. Woe unto Bethsaida and Chorazin, mercy for the memory of Tyre and Sidon! Down with self-exalting Capernaum, and let Sodom spring up from its ruins! With their proprieties, Bethsaida and Capernaum might be compared with Boston and Brooklyn, while the corruption of Sidon and Sodom might perhaps be paralleled in Chicago and San Francisco. If, then, Christ were to come to Chicago, as the evangelical enthusiast once wished might be the case, would the result be as the church might think it had reason to expect? In the midst of these painful transvaluations, Jesus had a way of justifying his attitude toward Sodom and things Sodomic.

In his treatment of sinners, Jesus seemed to look for two things as the basis of judgment: was there frankness at the beginning and sorrow at the end? The woman who brought the alabaster box of spikenard, the fruits of her sin, perhaps, seemed sadly out of place at the feast of the Pharisee. Jesus, who was sensitive to the very hem of his garment, was naturally supposed to possess such prophetic insight as would have made him aware of the character of this creature bathing his feet with mingled tears and oil, while she wiped them with her wanton tresses. To make a bad matter

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worse and to throw dust into the eyes of his critics, Jesus forgave the woman of her sins, and that upon somewhat novel grounds; she has sinned much, but she has loved much. Still more disconcerting was the frank, pessimistic treatment of the woman taken in sin. The account of this extraordinary episode, while wanting in such authoritative codices as Alexandrinus, Sinaiticus, and Vaticanus, has its due place in less pretentious manuscripts; at the same time, the affair itself is in the *manière* of the spiritual pessimist. With the Mosaic law and the Roman code there, Jesus lets the matter fall between two stools when he applies the pessimistic law of forgiveness in the light of which it is expected that offences should come. Like Thomas Hardy in his *Tess of the D'Urbervilles*, though without one trace of his cynicism, Jesus ignores the established codes and writes upon the soft earth the principia of a new régime: "I do not condemn thee; go and sin no more."

The pessimism of Jesus is quite ready to condemn when there are just grounds of offense, so that his law has its insurmountable jots and tittles. This appears in his word-picture of the last judgment. Ordinarily, when one like Saint Paul, or Milton, or Dante attempts an eschatology, the quenchless fire and deathless worm lick and writhe their way about in a scene whose supports are the old 'good' and 'bad.' But Jesus disappoints such moralistic art when he sets the *dies iræ* in the light of human compassion. Jesus postulated truth in the inward parts, whence should come tenderness; upon such truth-tenderness did he base his blessings and curses. Why were the goats on the left hand condemned to diabolical fire and the worm? As far as the account against them reads, they had been guilty of no moral wrongdoing; but, in the presence of those who were naked and hungry and in prison they had not had the sympathetic insight to see that there was something divine in such suffering. Those who in their lamb-like goodness were sorted to the right hand of blessing had to their credit nothing but the compassionate insight which led them to appreciate the true meaning of those who suffer.

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Hence, on the simple basis of sympathism, Jesus decides against those who are heavy-browed and hard-hearted. Truth and tenderness thus present the principles on which pessimistic religion is to be based.

The pessimistic psychology of Jesus made it possible for him to place sin in the human heart as such without any of the optimistic makeshifts of a criminology which seeks to relegate badness to everything but man himself. In the profundity of our scientism, we conclude that crime must be due to such things as drink or diet, left-handedness or sun-spots, adenoids or bad teeth. Jesus made no use of evidence alchoholic or astronomic, dietetic or dental, physiological or sociological, but with his wonted straightforwardness declared, "Out of the heart of men proceed evil thoughts, adulteries, fornications, murders, thefts, covetousness, wickedness, deceit, lasciviousness, an evil eye, blasphemy, pride, foolishness." As Gorky puts it, "Man bears the cost of all." In the midst of such pessimism of truth, Jesus did not plunge man into the passivism of the Schopenhauerian form of the doctrine, but kept saying, "Be of good cheer." While in the presence of war and death, he could only say, "Let not your heart be troubled." Epictetus had felt somewhat of this tranquility in his day, but the passive pessimism of such a half-hearted thinker shows its lack of authenticity when it is compared with the strong, affirmative pessimism of Jesus.

In contemporary culture, the pessimism of Jesus has not been without avail; optimism has been content with the loaves and fishes, but pessimism looks for the miracle as such. Without meaning to, Schopenhauer did the Galilean a good service, a service more worthy than that of Hegel whose name once meant so much for *Theologie*. Coming forth from Schopenhauer, Nietzsche and Tolstoy agreed to disagree in their interpretation of pessimism, but perhaps they were never as far apart as they imagined. In the preface of *My Religion*, Tolstoy says:

"As the thief was nailed to his cross, so I was nailed to a life of suffering and evil. And as the thief saw opening

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before him the horrible shadows of death, so I beheld the same vista opening before me. Like the thief on the cross, I believe in the doctrine of Jesus, and this belief has made me whole."

The case of Tolstoy is not isolated; Dostoievsky knows somewhat of the same pessimism, while other lands have shown themselves capable of rising above religious Philistinism. Wilde's stay in Reading Gaol advanced him as far as Gethsemane, Strindberg set out upon the Road to Damascus, Hauptmann hesitates, Sudermann is still defiant, Ernest Hello never had far to go, Bernard Shaw is fatally conceited, Verhaaren is ripening, Viereck has glanced away from Broadway toward 'Him of the wounded side.' In words, at least, Huysmans has outdone them all in pessimistic *contemptus sui;* hence the prayer of his Durtal:

"Father, I have driven the swine from my being, but they have trampled on me, and covered me with mire, and the very sty is in ruins."

In harmony with this prayer was the spirit of Durtal's confession, as the following soul-state, experienced while he sat by the cross-pond which the landscape-gardening of the monastery afforded, will show:

"Seated on the grass, Durtal gazed on the hazy image of the recumbent cross, and thinking of his own soul, which, like the pond, was stained by a bed of dead leaves and a dunghill of sins. He pitied the Saviour whom he was about to invite to bathe Himself there, for it would be no longer the Martyr of Golgotha to whom at all events death came on a hill, His head high, by daylight, in the open air; but it would be an increase of outrages, the abominable plunging of the crucified body, the head low, by night, into a depth of mud."

When optimism reads such religious psychology, it usually seeks to escape through some of the devious paths offered to those who are looking for 'varieties of religious experience.'

CHARLES GRAY SHAW.

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THE DOCTRINAIRE IN TIME OF CRISIS.[1]

ALFRED H. LLOYD.

Everybody works but the philosopher; the philosopher rules.—*After Plato.*

IN THESE days of the cry for preparedness and the awe of efficiency and the heralding of the superman, in these days when to everyone the atmosphere feels charged and most radical changes are felt to be near at hand, the things of the mind and the heart cannot really be so much discredited or so wholly forgotten and dismissed as some would wish them, as many seem to imagine them and as events in certain quarters might lead us all to suppose them. There is, no doubt, a deal of practical wisdom in present fortification and armament. Scientific skill is, no doubt, a power that will really do things. No doubt, too, a new human genius, racial or personal, is near its fulfilment and delivery and, relatively to the past, superhumanly will have its material triumphs. But military preparation and scientific efficiency and a materially superior humanity must be very far from the only needs or—be it added—from the only passions of the hour. Thus there is that, as I believe, in the present events and their crisis, which may well remind us of Plato and the royal importance which he would give to philosophy; for now, as always in the past at time of great crisis, the preparation demanded is by no means only of man physical.

Material and rational efficiency indeed! Always, when under stress of events, men have felt they must be more thoroughly practical, more effectively active, they have had also to acquire attitudes which I shall call attitudes of the spirit and which many would regard attitudes of inaction. Thus men have found quite as much need of right feeling and point of view as of mere brawn or skill or material

[1] President's address delivered April 21 before the Western Philosophical Association at its annual meeting in St. Louis, Mo., April 21–22, 1916.

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resources; of inner life, of courage and heroic living within, as of practical action without; and the much heralded superman of to-day or to-morrow can offer no exception to what has been in the past. Triumphant superiority, in short, superiority of the sort that has made new epochs, not only never has been only physical, but also must not ever be expected to be only physical. Have men, even when striving primarily for physical superiority, ever failed at least to avow motives of culture and civilization? Even more to the point, has not great spiritual leadership always been born when physical nature has been most loose and violent? As I have ventured to render Plato, everybody works but the philosopher; the philosopher, apostle of the spirit, rules.

Of the philosopher, then, of him whom many would style, meaning anything but praise, only the doctrinaire, notoriously so innocent of anything material and practical, of the doctrinaire in time of crisis I would speak on this occasion. The signs that recent events have checked the activities of the human mind as well as brought despair to the human spirit are many. Editors, for example, and secretaries of learned societies have complained that the needed contributions or papers have failed to come and interest in reading as well as in writing is said to have waned. Only war literature, too near the time and the fact to be more than emotionally satisfying, "J 'Accuse" and "The Pentecost of Calamity" in their different ways showing very well what I mean, has really held the attention; and already this literature seems to be losing its hold. But, as to the latter point, with the emotional and more partisan literature passing, as well as with the significant decline of the hate-cults and of similar symptoms of lack of control, a more rational and impartial standpoint may surely be counted on and from such a standpoint must come permanently significant ideas, material for influential theory; and the doctrinaire may then take the place that, as already suggested here, history would award him, among the supermen of the time.

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Here surely is a striking paragraph from Figgis's Introduction to his little book: "From Gerson to Grotius"; a paragraph that assigns to the doctrinaire no humble place in history:

"Hildebrand, Calvin, Rousseau were doctrinaires, if ever there were such. Yet neither Bismarck nor even Napoleon has had a more terrific strength to shape the destinies of men. In literature as in life the thinker may be dull, but it is a significant dullness."

Those are startling phrases. The "terrific strength" of the doctrinaire! How that must shock all who have found the doctrinaire innocent of the work of the world, perhaps even declaring with a certain "learned" judge that theory never did anything in the whole history of mankind. The thinker's "significant dullness!" Can this be aught but the familiar stupidity, the common dullness, of abstract truth, of non-partisan ideas? How dull such ideas have to be and—reflect on this carefully—in that they are so comprehensive and therefore so essential or vital how much closer to reality and to the irresistible power of reality than anything partisan, however interesting or exciting, can ever be! Just once more may I repeat my Platonic parody? Everybody works but the philosopher. The philosopher, however, the doctrinaire, thanks even to his so-called idleness and the seeming dullness of his abstractions, makes history; while the recognized workers among men, always so practical and efficient, only busily keep the things that already are going or—as should be conceded—at times greatly change those things *outwardly;* the philosopher, I say, makes history, consenting as he does by his attention on abstract non-partisan ideas to the free, terrifically strong, always creative life of nature. Nature, it must be remembered, or reality, is always impartial, allowing the activities of all sides; just like an abstract idea. The great Greek's doctrine, then, of the philosopher-king may never hold for any visible throne or its robed and royal occupant; certainly, in spite of the hopes of the mediæval church, it has not so held in the past;

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but, as giving report of what holds invisibly, of what is true of life apart from its show of form and importance of visible institution, it simply applies to those great powers behind thrones, those unofficial rulers of human life, abstract principle and the nature that, like her storm or her sunshine, is no respecter of the just or the unjust. It is more than a pretty fancy that nature is only the invisible throne from which the thinker rules, administering his abstract principle. His rule, too, is an absolute one, even as the Greek said; absolute perhaps at the expense of manifest form and location and ordinary practicality, but still absolute; and so unlike the local and temporal authority of crowned kings with their pomp and their display, their rise and their fall.

Is it immodest that a philosopher—at least by profession and office—in such exalted language should remind a company of philosophers of their royal or imperial calling? The possible offense cannot, after all, be very great, for the authority and the throne claimed are not ordinarily public or publicly assertive. Moreover, however immodestly, there is indisputably as much justice in the present appreciation of philosophy as in the common charges against it. There can, indeed, be no public office, no visible throne for the philosopher, as most men would insist, because he simply is so impractical, irrational, fantastic. Free and speculative, not scientific; poetic and visionary, not sober; often cryptic or—a still harder word—apocalyptic, not normal and intelligible, the philosopher may not be trusted with a throne, should he seek or desire one. But, as with other men, the faults that stand thus in his way are very near to his virtues or—better put—are his possible virtues, the basis of whatever opportunity is his. So often all that a fault needs is more courage, confidence, sense of responsibility. Thus, in this case of philosophy, the courage of seeming abnormal, irrational, speculative, unintelligible, only poetic, above all impractical and impartial, is just what may bring to the philosopher his "terrific strength,"

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his "significant dullness," his irresistible albeit unthroned authority.

Again, there are philosophers and philosophers, doctrinaires and doctrinaires; very much as there are physicians and physicians; quacks, on the one hand, and men of real service and achievement on the other; the difference possibly being only that, just remarked, between faults and virtues, irresponsibility and responsibility. There is the faulty, futile way of being speculative, visionary, cryptic, the way of all quackery, and there is the excellent way of genuine achievement. The philosopher-king may take his court-fool from the quacks, if he choose, but he himself must be of very different mind and work. In philosophy, as in medicine, the quack has never really earned, or made intimately his own, such equipment of idea and technique as he has and also that which he has he puts to no genuine and appropriate use, his expression of his calling being only parodic; but the true man, philosopher or physician, has what he has by real attainment and makes genuine and vital use of it. Take, for specific example, the unscientific character of the philosopher. In this lies real danger as well as real opportunity; in it are possible folly and futility as well as possible high achievement. True philosophy, responsible to its great calling, must be more than science, say superscientific; it must in fact be unscientific, but unscientific, not by any means in the sense of ignorance or contempt, but in the sense of free and appreciative use, through the very revelations of science seeing beyond what science itself with the very best instruments and methods sees or ever can see. The *mediation* of science, in other words, not science's immediate form and content or method and vision, is true philosophy as well as—in a real sense—unscientific philosophy. Thus science is for philosophy, not philosophy for science.

More generally, too, that is, in other fields of human experience besides that of accurate, positive, scientific knowledge and method, the philosopher, if concerning himself with these fields and also showing himself true to

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his calling, must have an appreciative familiarity with the normal and practical life that surrounds him. He must have the skill and freedom of this life and its ways; mediation here, as above, being indispensable. In life, as in thought or knowledge, true philosophy requires the real use of something formal and normal in service of something vital. So Socrates used Sophistry. So Luther used Romanism. So at large the speculative life, if justified, uses life's formal media of expression; being thus a great spender or investor; putting to real use, without the miserly restraint of the always conservative "practical" man, the known facts and accustomed ways of the time. The speculative philosopher really uses, while the practical man spends only for return in kind. Loyal to what is natural and vital, philosophy may neither cultivate the normal, the formal and visible, just for its own sake nor ignore this; but always must find in it the medium of what is natural, the instrument of what is vital. In fine, speculative thinking after—in the sense also of thorough—scientific knowledge, poetry after positive experience, adventure that is able to employ, as it sets out, the best equipment of its day, an idealism that has its roots in realism and pragmatism, these show the philosopher's or the doctrinaire's true path and they show also in a new way the source of his "terrific strength"; for they show, not only his attention upon general principles and his consent to that executive of general principle, the free life of nature, both of these marking a resort to what is vital, but they show also what is formal come into the free use of what is vital. Can there be a greater strength in action or in thought than that of the vital *using* the formal? Not scientificism, then, nor even mathematicalism, not formalism of any kind nor any rigid logic and its consistencies can ever be philosophy; yet important services to philosophy must belong to all of them.

And of philosophy one thing more must be said; and, in view of the present call for the philosopher, or doctrinaire, a very timely thing. Thus, when men turn to abstract

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and non-partisan truth, to general principles, always they are in the midst of some conflict, even as at the present time. Their own way of living and thinking has come into conflict with some other way and the resort to abstract principle has for its motive, not only what I have called mediation, the mediation of their way but also adjustment and reconciliation of the conflicting ways. It is thus the peculiar opportunity of general principle to marshall to its service *all* the forces, however different, of the life of its time. What wonder that philosophy is so powerful.

Now, as doctrinaires, Hildebrand, Calvin, Rousseau, "terrifically strong," "significantly dull," had that power at once of the vital using the formal and of abstract principle marshalling different forces; but, if I may add just one to Figgis's list, Plato himself, so conscious of the power of philosophy, has had few if any superiors and, although the story may seem too old to be told again, especially here, I would use the reign of Plato to illustrate the three things which I have so far said about the power of philosophy. Thus, in simple summary of what has been said: (1) Philosophy rules by its very abstraction, its aloofness from partisanship, and by its consequent consent—volitional as well as intellectual—to informal and impartial or all-sided nature; (2) The virtue or the strength of philosophy lies potentially in its very dangers or faults; and (3) There can be no might like that which comes to philosophy from its finding in the formal the mediation of the vital or—the same thing—from its resigning all the forms, that men have set up and have long cherished as of immediate worth, to the full free use of impartial nature.

The philosophy of Plato centres about the Idea or the World of Ideas. At least for the purposes of this address the Platonic Idea may be called an intellectual or conceptual extension, made to cover all things in experience, that is, the things in natural life as well as the things in social and political life, of the cosmopolitan spirit, the sense of universality, then developed or developing in Greece and

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especially in Athens. It was this, as well as a deeply logical outcome or climax of the science and philosophy of the past. And also, to recall Zeller's account, in which he says that with Plato's Ideas the definitions or conceptions of Socrates became metaphysical realities or entities, it was real and substantial but in a world of its own, a world of things-in-general, an invisible and immaterial world. The Idea, then, meant, first, a generalization from the particular, the local and temporal life of Greek experience, and, second, a sublimation of it and even a certain withdrawal from, or negation of, that life. With regard to these meanings, however, one must not forget, as many seem to have forgotten, that neither the generalization nor the negation, expressed by the Idea, was or ever could be free from the positive historical context in which it had arisen and that the necessary effect of the bondage to that context was to put context and Idea in the relation—always a dynamic relation—of means and end. Too many students of theories and their history are quite oblivious of the fact that the general and the negative must always, however general and negative, carry the context of something particular and positive. Remembering, then, the notion of the Idea as only an extension of the cosmopolitan spirit of its time, we can see in it a virtual gifting of all the results of Greek life to human life at large. Greek life was put to the use of life at large and Plato's philosophy, only carrying forward that of his master Socrates, by its Idealism, by an Other-worldism that asserted neither more nor less than an other world of the universals which were intimated in the particulars of the Greek world, only served to complete, by valuing ideally, the then happening *mediation* of Greek civilization in Mediterranean history. What but eventual mediation could be the import of the relativism, the conventionality and the utilitarian spirit —vices that were only so many possible virtues—to which Greek life was declining even in the time of Pericles and had well nigh openly committed itself in the time of Socrates and Plato? Henceforth the Greek expression of

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life could be only an abstract and prosaic symbol for consciousness, a symbol of something universal, and a lifeless instrument for activity, an instrument of world-wide changes. Of course any instrument of life must itself be lifeless; any mere symbol must be prosaic. In time, too, the Greek mode or régime, becoming a mere utility for exploitation by alien powers, the play of unsympathetic natural forces and primitive passions, as its armies were hired, its institutions rudely imitated, its adorned cities plundered, its intellectual life exploited, its morality debauched, its very religion appropriated and degraded, the Greek régime became still more truly mere mediating symbol and instrument. So, if Plato's Idealism was a recognition and valuation of what I have already called the mediation of Greek civilization, it was also, at least prophetically, a sanction and appreciation even of the final passing of that civilization, say an idealistic meditation on death, as the local, provincial life surrendered itself to the larger whole. Do not civilizations die that what they have achieved may get into free use? But, to revert to what I would especially stress, the Platonic Idea held in it as essential to its meaning, that is, to its dynamic value or power, the mediation of Greek life, the Mediterranean use of Greek achievements.

As giving additional support to this view of Plato's Idea, there is the important fact that the personal individual, instead of the class or nation, had become or was becoming the vital unit of Greek life. Of the assertive individual two things, now quite familiar to us, are quite true: (1) For him the formal or institutional life is means, not end; and (2) His loyalty is primarily to abstract principle, to spirit rather than to letter, while his world is wide and free, the world of the cosmopolitan, and his life, often boastfully, the life of nature. Moreover, not only was the time of Plato or, more broadly, of Socrates, Plato and Aristotle, a time of cosmopolitan individuals *using* the formal, conventional life of their time and place under no restraint save that of loyalty to abstract principle, a

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loyalty that always makes for great freedom, when not for great license; but also it was a time when the Platonic Idea and its peculiar *motif*, evident in both the use and the loyalty, were widely propagated and popularized by all sorts of isms, notably at first by Cynicism and Cyrenaicism and later, after Aristotle, by Stoicism and Epicurism. In their various ways these isms led men to accept as worth while and so to will even as ideal the life of nature, thus making them cultivate an inner life and the significant subjective attitudes of an inner life and at the same time accept even as theirs, come good or ill, the uncontrolled, seemingly lawless, irrational life of the world outside. So was the Stoic able to say, as death came by some violence of nature: "Such was my will"; and the Epicurean: "So long as I am, death is not." Through these isms, then, that left human devices the sport of nature and made human creatures very subjective and inwardly personal, the Platonic Idea came to rule the Mediterranean; not, of course, from any visible throne but in the life and consciousness of living, willing, human individuals. Not to appreciate thus the evident dynamic value and historic achievement of the Idea is to find Plato, the doctrinaire, only dull; dull without being significant.

Perhaps I have failed to make what I would say clear. Yet this is my notion. In Plato's doctrine, judged not abstractly by itself but actually by its historic context, there is manifest preparation of the human spirit for historic action, nay, for historic volition, for epoch-making and world-wide movement and in a significant and inspiring degree, inspiring to all thinkers, the agency of that action belongs to Plato himself, doctrinaire that he was. Men sometimes act through ingeniously devised tools or machinery; sometimes through the social order supplied by customs and institutions; and, when they so act, we do not deny them the agent's part in what is done. How subtle and skilful they are! What a practical and productive life they lead! How well they must have planned! How intelligent they must be! But let men deepen their in-

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sight, let them in their vision of the Idea insist that a free nature, unconfined in any tool or institution, be the medium through which their will works and that all human devices, all tools and institutions, be put to nature's service; and we abuse them as mere doctrinaires, impractical, unproductive, idle. Surely to will the life of nature, surrendering things human to that, is a greater thing than to wield a tool, however effectively, or to head an institution, however successfully. A great difference there is, of course, between nature's life, as in the naïveté of childhood and savagery, and *willing* nature's life. I suggest, further, that the "activity within" of a doctrinaire, like Plato, is more tremendous in what it produces without than that of any user of tools or of any head of an institution, and as to the part that tools and institutions have in that inner activity, in the volition of it, or in the life of nature, which is its outer expression, these always, although in a sense subordinated, have the value of memories or of passing habits of thought and action which supply the new life with bases of guidance and valuation. Thus even out of the new life and its new conditions old things must be renewed or remade; on new lines, perhaps, in forms more comprehensive and adaptive, but still the old, old things. So did Rome, as I remember Sir John Seeley to have put it, become only a new, albeit a very much overgrown, Greek city-state. But, to return to Plato, it is well as to his life and achievement to remember that he failed, when making his three expeditions to Sicily, in his effort to establish there an ideal Greek commonwealth; he was such a dreamer; his vision was so abstract. Yet, when I think of Plato and his Idea, dynamic at once with the passing forms and memories of a great civilization and with the untethered life of the whole Mediterranean, I forget Sicily and recall impartial and imperial Rome and catholic St. Peter's. In the making of Rome Plato had a greater rôle than either Alexander, the forerunner in the building of a Mediterrnanean empire, or Julius Caesar himself. Plato's vision really was so abstract!

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I set out by declaring that there was to-day a call for the doctrinaire, for the man of far vision, the vision of abstract principle, and following that declaration, besides discussing the rule of philosophy and then illustrating this by the regal position of Plato in history, I pointed out that the speculative thinker had his duty to science or, more generally, to form and discipline. Would I, then, look to the training of colleges and universities to supply the doctrinaire or the doctrinaires for which the times are calling? I can merely reply that these institutions will have failed to justify themselves and the public's support of them, if they fail to graduate some great seers, able by their superior training to see well and far, even quite beyond what is positively visible, to see, let me say, around the curve in the road. With this metaphor, too, it is well to recall that the world now rides in an automobile. Far and alert seers the life of to-day must have and, providing them, our institutions of learning will have done only their natural service.

Not long ago the "practical" men of society were given to finding fault with the universities for sending out doctrinaires and inefficients generally. Their fault-finding had some warrant, I do not doubt, although to any "practical" man any real thinker may seem inefficient. Sensitive to the criticism, however, the universities adopted reforms. Witness the passing of the classics, the rise of the natural sciences, such changes in the curriculum as are best summed up in the words, commercialism and vocationalism; the neglect of the humanities in general, not merely of the classics; the uneven struggle for maintenance of scholarship and pure science; the dangers from too much technical requirement threatening independence and originality; the restraint, too often reported, on freedom of thought and teaching; departmental individualism; the narrowness of the training in many if not in most of the professional schools, be they schools of medicine, engineering, dentistry, law, or theology; and, to stop here, the still practiced idolatry of specialism. That all these have

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been checks on the graduation of great doctrinaires no one can fail to appreciate. The restraint of them, it is quite true, may have had, or indeed must have had, its real use, supplying the advantage of continued, careful looking, as well as that of long, formal discipline, before the adventure of a new leap. But, this granted, a crisis is here; a change must now come.

In time of crisis man must leap. Breadth and depth of view as well as freedom of view must be wholly possible. In all subjects, departments, professions, these must not only be possible; also they must be openly encouraged. As never before, free scholarship, pure science, bold speculation must be fostered; for only of the spirit of these things is the great doctrinaire born. The way to a regal vision may be through discipline, but it leads beyond discipline. The colleges and universities, then, must take care lest in their zeal to serve life practically they fail in the present need to serve it really, failing to provide it with real seers. Without real vision, especially in time of crisis, life cannot live.

And suppose the universities should not respond to the present call. History has many examples of institutions being found wanting in critical moments, the work required being taken up by agencies quite outside the institutional walls. Frequently, for example, the church has been put to shame in this way, but I am not one of those who think the church the only institution that has faults. Our universities may fail in their duty. Yet the goal is greatly worth their striving and, in any event, what life must have it usually gets; if not in one way, then in some other. For the great change that seems to be drawing near, men of commanding vision must come and surely will come.

From all that I have said so far there is at least one very obvious conclusion. Our profession never has had larger possibilities. It has never been more worth while or in face of greater responsibilities. The philosopher, the thinker, above all the young thinker of to-day is challenged, as

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never before. To speak very directly, the current issue of preparedness cannot be met by mere military organization, by armies and munitions alone. What Plato knew as the Idea must be rediscovered for our time and, dynamic with all the elements of civilization which the different nations are representing, given to the consciousness and volition of the world. Your interest, as shown by the chief topic of discussion at this meeting of the Association, certainly indicates that you are responding to the present demand and the papers presented, some of them already read and discussed, show how fully you realize that the problem is not a narrowly political one but a problem demanding the widest and freest study; a problem, if I may so express myself, that must be brought by thinkers, trained to skill and widely informed, to the court of the Idea. To-day's vision must measure fully to the issue.

Should the great issue of the day be met only in the ways of material efficiency, no really new life could come out of the conflict and certainly human life, so tried, so deeply searched, has a right to something new. Moreover, where there is real conflict, as at present, there is always more than just a balancing of like forces that represent life on a certain plane, of a certain kind; there is also an issue drawn between that kind of life and something different in kind, something new. In really significant struggles, I say, like forces are set against each other, but also kinds of life, one lower, the other higher, one passing, the other coming, are at war. I have no direct quarrel, then, with the promoters of military preparedness or of preparedness in any merely material way, but I must protest against their assumption, apparent if not real, that their sort of preparedness is the only sort or that the struggle has only the one aspect of a meeting of military forces, very real and present for the actual contestants, very real and future for peoples that are now neutral. They should remember that before war one cannot prepare, during war one cannot fight and, above all, after war one cannot live by soldiers or munitions alone. Also they should re-

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member, even while they plan for the battle of like forces, the other battle between kinds of living and, remembering this, they should have some patience with those who hear besides the call to arms a call to ideas. Ideas may lack the notes of martial music and the odors of deadly explosives, but not to heed the call to ideas is at once treachery to the past and cowardice toward the future. Not to face the possibility of a new kind of life is to refuse to face honestly a real phase of the great struggle. It is such a mistake to suppose that there is no fighting in thinking and no courage required of the thinker.

Much is heard of neutrality, especially on this side of the Atlantic. But neutrality is of two sorts. There is the neutrality which only the policy of the moment prompts and which may be disturbed at any moment. I would call this a military neutrality, because war is the air it breathes. The neutral nation is always thinking of itself as either in the war or not in it. Other nations are no better than possible enemies. Present and future are judged under no values save those incident to war. The future holds nothing different, except as to personnel and magnitude, from what has been in the past. But, besides this military neutrality, there is another, springing not from momentary policy, but from deep and critically informed conviction, the neutrality of impartial thought, the neutrality that is superior to the war of forces, because it can see right and wrong on both sides, and that looks to an outcome that will bring new life through assimilation of the warring factors to each other and that will accordingly give victory as well as defeat to both. When, as not long ago, an Englishman said to me that in spite of his patriotism, which often blinded him to many things, he had to recognize the best solution of the present war to be rather a drawn war than the serious defeat of either side, he was at least for the moment neutral in this way of the impartial thinker. He had got at least a distant view of the Idea. Handicapped as he was by having his own country on one side of the battle of forces, he was nevertheless feeling some responsibility to the battle of kinds of living and to

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the impartial thinking which by sanctioning the warring forces and calling for their adaptation will make possible something new in the life of nations. Of course all new life must come from adjustments of different ways of life and there is no power like that which comes to life from the assimilation to each other of ways and forces that have met in conflict.

I touch now upon a delicate matter. Have we always been as sympathetic as we should be with the tribe of the Pacifists, perhaps at this time the most unpopular group in this neutral nation of ours? The Pacifists are flagrantly guilty, it is commonly said or felt, of abstraction and sentiment; dreaming, as they seem to, of a most visionary future, they blind themselves to present facts, to political requirements, to fundamental biological necessities; and so they are impractical even to the point of doing more harm than good. Blind they are without doubt. Yet have they absolutely no right to consideration? Is ridicule or abuse their only due? Are they after all so thoroughly impractical as to be interested in something that has no place in human life and interest? Surely, when one really thinks broadly and candidly, their abstraction and sentiment—or unreason—are only counter to and compensative of the equally unreasoning abstraction under which their detractors think about war; and, if the question be one simply of sentiment, unreason and impracticality, I submit that the honors are about even. Often ill-advised, extravagant, fantastic, the peace propaganda nevertheless has its real place in present life and thought, say also in the present cult of preparedness. The many movements and societies having part in it I need not name here, but in large measure they, too, are making ready for conditions and possibilities at the close of the war and, taken all in all, are not meaning to interfere with the warring nations in their conduct of the war or with neutral nations in a reasonable and practical foresight. Simply, at least as I understand them, claiming, too, no great insight or originality for my interpretation of them, in their propaganda they hope that the public consciousness may be

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so educated now—observe the note of preparedness—that later, when the present war comes to an end, a positive influence may be ready and actively exerted, on the powers that shall then be, against the policy, as a recognized policy, as the trump card, of the settlement of disputes by resort to arms and that accordingly a change may be brought about which will really give to life a new quality, putting it openly and squarely on a new basis, bringing it some new life in return for the present agony. I am not one who even for a moment can allow himself to think the time is coming when there will be no more wars, but I am one who believes in abatement and betterment and especially in a progress to higher planes and methods for the rivalries of men and peoples.

Yes, as to the peace societies, however loose and inexpert in their ideas, however suggestive of mere Utopian dreaming these may appear to be, they still do show that the people are planning and hoping as well as planning and fearing; struggling for some vision as well as reaching for sword and shield. In a neutral country, moreover, only to plan and fear, deliberately to discourage planning and hoping, is—recalling phrases used already—treachery to the past and cowardice towards the future. The Pacifists, even the worst of them, you see, are not the only cowards! Paradoxically, of course, yet with real point, a time of war being always a time of paradoxes, thinking and planning that is merely what men commonly call practical is not practical, because it is bound to be short-sighted, historically conservative, unproductive. A neutral people, furthermore, that would maintain its self-respect in a time of great world-struggle, sooner or later must either—notice the alternation—pluckily abandon its neutrality, so easily cultivated for most selfish and sordid motives, and openly and vigorously enter the struggle, which openly or not it cannot help taking a real part in, or, assuming that greater neutrality, to which I have referred, must apply its best thinking, its best planning, its fullest power and purpose to the possibility that the struggle itself has created of a new and better way of interna-

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tional living. Remember the struggle has those two aspects: (1) A meeting and balancing of forces in kind, the kind showing life on one plane, and (2) A meeting of two kinds of life, one mainly traditional, the other in prospect, striving for realization. The neutral nation, I say, that would prove its worth and courage, cannot stay out; but must choose, facing all the chances of failure, not merely with which side, but also with which phase of the conflict it will identify itself. If neutral as to the first with good cause and honest purpose, it cannot be neutral as to the second. Staying out of the war with dignity, it must fight for the best results of the war, seeking to make its influence and effective participation in the results proportionate with its greatness and importance, to make the results true to its best genius and vision. Here, you see, I am making an appeal to the courage not less than to the conscience of the neutral nation. The greater the nation, the greater the opportunity and the more pointed the appeal.

But I shall seem to have digressed. The appeal on this occasion is directly to the thinking of the people. Are the peace-propagandists sentimental, visionary, inexpert in their thinking? Are the advocates of preparedness sentimental, visionary, inexpert in their thinking? Are both the peace party and the war party impractical and one-sided? Then it remains for me to say, concluding this address before the teachers of philosophy from a large and important section of a still too neutral people, that the challenge to the expert thinker, broad in view and skilful in method and clean-cut in statement, at the present time is only so much the more insistent. The thinkers of Germany and Austria, of France and England and Russia, cannot have the opportunity which plainly lies before the thinkers of a great nation, not openly in the struggle, like the United States. Once again in history philosophy has the chance of a great reign.

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THE SERVILE MIND.

GERTRUDE BESSE KING.

THE observation that the wish is father to the thought was never more apt than now. The will-to-believe in the strength and righteousness of one cause and the weakness and wickedness of the other successfully produces the confirming facts. In the favorable atmosphere of Germany, tales of Polish and Servian atrocities multiply, and the welcome conviction grows that the British Empire is on the point of disintegration, harassed by disaffection of the Colonies and disloyalty at home. In the fertile soil of Allied minds there blooms the Bryce report, and the conclusion can no longer be avoided that the Central Powers have passed their zenith and are now face to face with starvation and revolutionary riots within the Empires and an imminent shortage of men and ammunition upon all the fronts. The "gradual process of attrition" is believed to be defeating Germany.

The wish-to-disbelieve is no less potent. The exceptional credulity of the war mind when presented with desirable possibilities is matched by an equally exceptional resistance to those considered undesirable. Try to convince a German that the *Lusitania* was unarmed and carried no troops, or an Englishman that Allied submarines have sunk without warning unarmed merchant ships carrying women and children in the Sea of Marmora. You will see how fiercely the closed mind protects its own exclusiveness, attacking not only the unpleasant information but its innocent bearer. When I returned to England from Germany and was asked if Germany suffered from a shortage of munitions, money, and food, my evidence to the contrary made as much impression as snow upon the sea, except for the combative animosity that it aroused. When I hazarded the opinion that the average German was

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more adequately informed as to the conduct of the war than the average Frenchman or Englishman, I was branded as a pro-German and discredited. In Germany when I maintained that many Englishmen were unquestionably influenced in their desire for the war by an outraged sense of Belgium's violated neutrality, I might as well have discoursed to the air, except for the suspicion I invited as an Anglophile.

The wish-to-believe not only fertilizes spurious facts and spurns unwelcome ones but alters accepted facts, subtly, enormously. On both sides in this contest, an intense atmosphere has been unconsciously generated which insidiously transforms incoming material. Fresh data is suffused so that it harmonizes with old assumptions. Only after plunging first into one electric medium of thought and then into the other can one realize how subtle, yet how considerable this alteration is. Notice a bit of information that seems to possess some individuality of its own and consider how the aspect and bearing that it wore in Berlin undergoes a sea-change upon reaching London.

The process of fact transformation is not always an easy and wholly unconscious one. Sometimes it takes a veritable artist to recolor a thoroughly Germanic fact to accord with the Allied background, or vice versa. But with patience it can be accomplished. Try the effect of suggesting, in the midst of a conversation about the war, that a submarine in the Dardanelles is under no legal immunities that do not attach to a submarine in a declared and limited war zone. Or argue that the Allies have done a fairly serious thing, from the point of view of international law, in violating the neutrality of that small State, Greece, whose sovereignty was recognised in a treaty signed by Great Britain, France, and Russia. Or maintain in the presence of German sympathizers that Belgian documents showing Belgium's desire to protect her neutrality in case of violation by Germany did not constitute an unneutral alliance. These subjects will give an excellent opportunity for delicate and hair-splitting disquisitions not unworthy

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of the middle ages. Then, observing the curious mental agility which tries to establish the conclusion desired and to dodge the simple and inevitable one, ask yourself if in peace times one of your listeners would give a moment's tolerance to his own arguments.

The wonder is that such stultifying sophistry can be sincere. Yet no one believes that he is deceiving himself. Each is the victim of the occupational disease of war, now spreading to the proportions of an epidemic, a plague, a world-infection. And like some subtle maladies that induce the illusion of health in the patient, this sickness of the mind is unrecognised, and persists despite protests of impartiality. Sometimes there is a dim perception of disquieting symptoms indicated in the impatient remark, "This is no time to be judicial." If the patient wishes to imply that this is no time for weak emotions, who would disagree? But if, as is more likely, he means to let strong emotions excuse weak arguments, he gives up even the attempt to preserve mental health, preferring debility.

The wholesome function of the mind in Plato's dream was to rule like a king enthroned above conflicting instincts and desires, directing all in harmony. To-day the mind has abdicated this high authority and become the slave of desire—a great and noble desire possibly, but none the less an enslaving one. Conversation has degenerated into slander that does not stop short of the indictment of a whole nation, probably four or eight as the case may be; the press reflecting and exaggerating popular pressure is vivid with bitterness and tame with cant; our very historians have become pamphleteers.

Why and how did it happen? Must it, should it be?

It happened because popular feeling has to be mobilized behind the war if it is to be waged successfully. Unless the people make the war they labor in vain that make it. The time has passed when a diplomat of one of the great civilized nations dares to pledge his country to a serious foreign policy that is not backed, or is not capable of being backed, "when the facts come out," by the will of the

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majority. Whatever the forms of these different governments, they all have in fact, and in this sense, responsible ministries. The connection between government and people may not be equally obvious under different forms of organization but the vital responsiveness is there, whether an Italian mob is forcing the hands of the diplomats or Sir Edward Grey on a famous Monday evening is igniting the emotions and delicately feeling the pulse of the English nation, or the Kaiser from his Imperial balcony is both hypnotizing and expressing the will of Germany.

The old distinctions between the civil and military population have lost much of their former significance. For to-day every cog in the national machine is of unprecedented importance. The war is waged not only by the soldier but by the baker, the manufacturer, the engineer, the farmer, the small investor, the women. Unless, therefore, the emotions of the entire country can be keyed up to volunteer pitch and maintained at the point of fighting efficiency, the war machine loses momentum.

In order to fire popular imagination some "just cause" is essential. In small countries whose national existence is obviously bound up with economic interests and accessions of territory, it is possible to find fairly straightforward statements as to reasons for declaring war. In greater nations where the connection is not so obvious, it is essential to have a fairly clear case of self-defense, or some noble principle like the sanctity of treaties or the protection of small states, to give the proper glow and heat to patriotism. Lacking one or the other of these reasons as Italy has lacked them, the country suffers in divided feeling and half-heartedness in waging the war. It is not strange that aggressive measures on Italy's part at the Dardanelles or Salonica have been refused. Consequently we find each side making the most of the idea that it is upholding civilization against barbarism.

As soon, therefore, as war becomes imminent, every available agency is employed to play upon the powerful

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passion of patriotism. It is stimulated by appeals to loyalty, to fear, to love of home, to revenge, to self-interest, to religious feeling, to honor, to chivalry, to self-defense, to justice and to those vague and potent emotions that centre about one's background and early intimacies that intensify the sense of race. Like a conflagration the dormant force of patriotism spreads and gathers momentum until it sweeps a nation into self ignoring dedication to—slaughter. By the time war is actually launched not only the war emotion but the war mind has been created. It has become a hardened, nationalized function. Thought as an international possession has disappeared. In its place partisan patriotism is trying to wear the ill-fitting garments of logic. If any minds are still to be found who refuse this debasing allegiance they invite suspicion and scorn. They who persist in honoring truth are no longer honored.

The war mind is defended both by belligerents and by their sympathizers in neutral countries. This contest appears as a struggle between democracy and autocracy, between a regard for the sacredness of treaties on the one hand, and reliance upon treachery and brute force on the other, between civilization and barbarism. In the face of such issues, it is argued that neutrality is impossible, immoral. One cannot do otherwise than side with the forces that make for righteousness and stake one's faith upon their ultimate success. To urge freedom of speech and thought at such a moment verges upon treachery. What is essential, it is said, is not criticism of the government and of one's cause, but public confidence. We do not ask spectacled grinds to give endless re-statements of minute flaws or weaknesses; the large facts stand out, and in their light we need enthusiasm, action. We want conviction, not a tepid judicial temper; patriotism, not academic discriminations. In short, we require recruits, not professors. The Hobsons, Shaws, Rollands and Giolittis, who tell us the wrongs that we have committed and the fact that our enemies are after all such men as we, are losing

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opportunities for public service to which the fiery-tongued Lloyd Georges, Lord Derbys and d'Annunzios have risen, aided, let us add, by the Chauvinism of the Jingo press.

This being so, what mental attitude should be encouraged? Should the scientific historian hibernate until a more appropriate season, unless he lowers himself to the level of the propagandist? Should he make use of the influence that his disinterested scholarship has given him to increase the bias of those whose confidence he has won, gaining credence under false pretenses? Or should he refuse to prostitute his profession, to cheat the public, holding inviolate his honor as a thinker? Is hospitality and sanity and balance of the mind a desirable achievement, or a mild form of treason?

What is required to maintain the nation at fighting efficiency is not primarily a war mind but a war will. Nor are the two inseparable. Indeed, they are frequently at violent odds. The inflamed emotions upon which the war mind depends are necessarily unstable and transient. Sensationalism as a driving force is capricious and insatiable in its demands for increasing stimulus. The eagerness with which the Cavell incident was seized and exploited is a distressing illustration. The nation whose spiritual capital is an overwrought pseudo-patriotism is bound to feel the lag and drag of abated popular interest as soon as the first mad months are over. After a brief bright fury excelsior enthusiasms subside and leave behind light ashes for the wind. Intemperate appeals and vilifications do not bring the best recruits or tend to keep firm the national purpose. If a people's loyalty is not fundamentally sound and well organized in time of peace, it cannot undergo too violent a transformation at the summons of war. The attempt to make good by rhetoric, flaming posters and brass bands the deficiencies of a poor industrial system or weaknesses due to national laziness is doomed to futility. The demands of war are exacting and sustained. They cannot be met by ephemeral emotionalism.

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The partisan feeling which has taken captive the sovereign mind loses its first imperiousness, and little by little the war mind begins to assert some of its former independence. Even when most enslaved, it is an uncertain quantity. Despite its protection against disconcerting facts, there are limits to its resistance to the gradual advances of truth. Newspaper readers discover from the official reports that trenches are "retaken" which were never admitted to have been lost. Soldiers at the front find that daily association with the enemy shows them to be anything but brutes and blackguards. The large movements of the war demonstrate an enemy efficiency which even the war mind cannot blink. Unless falsities to cover up falsities can be produced with sufficient cumulative effect, the war mind becomes a dangerous slave.

The war will should not be backed by a servile mind and a sentimental and inflated patriotism. England's fighting strength at the front is due in no small degree to the sporting sang-froid of her unsentimental Tommies. The soldier is fortunate in lacking the debilitating bitterness so assiduously cultivated by the daily press at home. Judging from letters and many conversations, it seems to awaken in him only annoyance and disgust.

England's fighting strength at home is in proportion as war is conceived as a business, requiring coolness, training, intelligence, discipline, organization. To foster the war mind with its inability to calculate the enemy's strength, to see him clearly, to foresee his moves, his motives and his possibilities is to court disaster. To be forced to pamper a war mind in the public which has to be nourished on successes and placated at the expense of strategy is a serious handicap. Solid co-operation between people and government is founded on two factors—confidence, and a sense of identity of interest. These are to be attained by other means than by encouraging war rage at the cost of a wholesome public mind.

Free, normal minds are capable of great service to their country in producing a steadying influence not only now,

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but no less in the critical period of adjustment after the war. They furnish the temperate atmosphere without which agreement between the rival groups is impossible. Excessive and ridiculous demands on both sides, backed by extravagant confidence, is hardly conducive to mutual concessions. The question arises how to prepare for proposals of peace, a public that has set up standards of impossible accomplishment and nourished implacable hatreds. Above all, how make the transition from a world in arms to a world in peaceful interrelations. Many adjustments will have to be made, many difficulties tided over. The greatest of these will consist in internal rather than in external frictions. The unnatural excitement of war will give way to reaction. Party differences, local troubles, suspicions of graft, mismanagement, inefficiency, high-handedness, misrepresentation, corruption, will assert themselves and make trouble. With the disappearance of a threatening foe the heightened feelings so long exploited will seek outlets at home. In four of the great contending nations I have heard malcontents remark, "After the war there'll be a serious reckoning." A disappointing peace—and how can it be otherwise than disappointing to most of the nations involved?—will raise the issue as to why the war was launched at all, and blood will cry from the ground for vengeance. At best it will be a treacherous time, full of difficult political, economic, psychological adaptations, at worst it will spell what it may spell in Russia. Then indeed all that men of sturdy minds have done to combat the shallow violence of mob-thought will count in modifying the fury of reaction.

What after all is at the bottom of our tenderness for war illusions? Is it fear? Of what are we afraid? Do we care to imply that the case of nations whose interests are ours will collapse upon undue exposure? Do we lack the courage of our convictions to such an extent that we dare not open our minds, dare not face simple actual facts, or attempt to weigh their essential values? Because we scorn

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to be neutral in sympathy or indifferent as to outcome, do we therefore scorn to seek the neutral mind?

There is no other mind worthy of the name. Unquestionably we desire the responsible maturity which enables men to remain clear-eyed and just even when following the dictates of a loyal allegiance. It is not easy of attainment. To keep an even, undaunted mind in the midst of present storms is almost impossible. We must decide, however, and with vigor, whether we mean to add a little to the general sanity. If we do not so resolve we shall inevitably submit to decision by inertia, which is a decision against the freedom of thought. We cannot, even in our own minds, hope to stem the terrific tide of revolt against reason by any meagre efforts. We shall have to fight as a swimmer fights both the bullying onslaughts of the waves and the insidious undertow.

The war mind introduces serious elements of danger to the national life besides instability in war and revolution thereafter. When men lose the power to weigh with impartiality the issues brought before them, they have lost the faculties upon which the hope of democratic government is based. If we allow and encourage the bias that paralyses judgment, we pollute the springs that feed a stable democracy. We must count upon a progressively critical, sceptical public opinion, incapable of degradation, either by money, interest or feeling, though these be on a national scale. Such a popular mind does not of course exist, but it is for us to determine whether we shall increase or decrease the possibilities of that mind.

Some of us aspire toward a state where you can fool fewer and fewer of the people less and less of the time. It behooves us, therefore, to try to preserve to the full measure of our powers the intellectual integrity which is the foundation of such a commonwealth. The "man in the street" must think straight if he hopes to fulfil his function in a successful state. We whose ultimate hope rests in that same "man in the street" can serve our country in no greater, perhaps no more courageous, way than by hold-

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ing firmly to our own mental integrity. Whatever our allegiance in sympathy and purpose, let us bring back to full authority our slavish minds. We can thus do ourselves and our country the honor of refusing to surrender to desire the sovereign rights of thought.

GERTRUDE BESSE KING.

SHARON, MASSACHUSETTS.

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THE ORIGIN OF NIETZSCHE'S PROBLEM AND ITS SOLUTION.

BERTRAM M. LAING.

THROUGHOUT Nietzsche's writings three recurrent notes continually appear. The first is the lack of strong individualities; the second is the question of disinterested conduct; and the third is the subject of pessimism. These three factors sum up for Nietzsche the characteristics of his own time; and they form the burden of his philosophy. He wants to get rid of each of them; though, in the end, they are all reducible to the one problem of individuality. The solution he seeks is an objective one: no thinker is more alive to the necessity of an objective solution than Nietzsche.[1] But this is not obtained by appealing to any fact of consciousness, for that is to have recourse to a merely subjective feeling of worth, as is the case, for example, when conscience is taken as guide. It is to be obtained by a reference to the tendencies of life and the processes of nature, observable in the world around us.

I.

Nietzsche was at first an enthusiastic, though not a wholly uncritical, disciple of Schopenhauer, with whose writings he gained acquaintance, both by reading and lectures, during his earlier student-days at Leipzig. But he later became an ardent opponent of Schopenhauer. The ground of this almost complete change of attitude may be found, in part, in a certain strain of individualism in his temperament; probably, in part, too, in the state of his own health, as he himself says. "I made my philosophy," he remarks, "out of my will to health, to life. The years of my lowest vitality were the years when I ceased to be a

[1] *Vid. e. g., Will to Power:* 707.

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pessimist." These personal factors, however, need not be regarded as wholly explanatory of the change. The explanation is to be sought in the historical conditions of the time, through the influence of which whatever individualistic element was inherent in Nietzsche came to assume a definite theoretical character and to emerge as a metaphysical tenet.

Nietzsche's disagreement with Schopenhauer first began after 1870 and gradually gained a definite form in the following years, manifesting itself at length in a complete breach with Wagner, who was throughout a staunch admirer of Schopenhauer, and then finally in a vigorous attack upon his former master. The conditions arising in Germany after 1870 were what roused Nietzsche to active criticism and resolute constructive effort. He noted after the victorious wars against Denmark, Austria, and particularly France, a new spirit emerging in Germany; and in its smugness, selfishness, self-glorification, repulsive nationalism, and national greed it showed itself a spirit that was far away from that of the world of Goethe. He was struck, too, by the growing sterility of the period in really great men. Nowhere could there be found a man who had set his seal upon the age by establishing new ideals. Wagner appeared to him for a time as the Messiah; but with the production of Parsifal the hope was destroyed, for it revealed Wagner to be completely subject to the influences of the time, Parsifal being merely Schopenhauer's doctrine of the saint, and Schopenhauer himself being but a reproduction of Christianity. Nietzsche saw among his fellow-countrymen a growing servility, imitativeness and uniformity of character, an increasing loss of the sense of proportion between the small and the great, and the gradual disappearance of any desire to accept individual responsibility or a readiness to stand alone against the crowd for the sake of new values. The individual, losing himself in the mass, had come to live without responsibility, and to live thus had come to mean living with freedom.

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Nietzsche ascribes this change in German character to the prevailing system of values, and to the presence of a powerful public opinion, which secured the observance of the accepted standards, and against which none except very strong natures dared rise up. But the power of this public opinion and such a system of values are established by education; and hence Nietzsche regards the German educational system as, in the first instance, the source of danger. His criticism of it is set forth in the essays on "David Strauss" and (more particularly) on "Schopenhauer as educator." The system, according to him, refused to assign any independent worth to the individual, and it aimed at inculcating standards of self-sacrifice, at exalting the whole or the state at the expense of the individual, and at producing thereby men serviceable to the state in the form of machines. The prevailing study of history, which he attacks in his essay on "the Advantage and Disadvantage of History for Life," was steadily creating a weight of tradition which magnified the state but oppressed individuality. Religion, also, like morality, was made subservient to the same purpose: it had become a mere artifice with the ruling class; this, it may be added, being the reason of the hostility to the church on the part of Socialism in Germany, and also of Nietzsche's inclusion of morality and Christianity in one sweeping condemnation. That the whole system was generally believed to be effective, was shown by the common remark that the war against France had been won by the Prussian schoolmaster.

Nietzsche, from a study of history, held that all growth and progress took place, and could alone take place, through the individual, and that every advance necessitated opposition to the accepted values and that body of tradition consolidated in the state. Anything, accordingly, that thrust the individual into a secondary position and that prevented him from developing his life to its proper fulness, was to be attacked. A system that trained the individual to be only an instrument and that had regard to his welfare only in so far as it was necessary to make him an efficient instrument,

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was hostile to true education. The latter meant to Nietzsche a fine adjustment of all impulses and instincts in one rich, harmonious individuality, a development of individual initiative, of a sense of self-responsibility, of a readiness to be answerable for one's self and to stand by one's self. This is what Nietzsche calls culture; it is also what he means by "living dangerously"; and he opposes it to civilisation, which was the system of life then prevalent, and which meant the dominance of the state, the maiming of individuality, the placing of the end in the crowd, the sway of standards of altruism and self-sacrifice. He regarded culture and the state as antagonistic, and held that there was a standard of value other than the state, and decisive even against altruism and sacrifice.

Nietzsche, however, finds behind the established system of education a more ultimate cause of the disregard of the claims of the individual, and of the consequent deterioration of the German character. Education itself is based upon definite theories; and these must be held to be the ultimate cause. Nietzsche regards that secondary position, assigned to individuality in practice in his own time, as the outcome of a tendency running throughout the whole history of philosophy. The tendency is to accept concepts or ideas as the standard by which to measure life, to trust notions just as much as the senses are mistrusted; and its culminating point is attained according to Nietzsche in the philosophy of Schopenhauer.

The essence of Schopenhauer's teaching is a hostility to individuality. According to it, the highest form of knowledge is a pure objective intuition of the Ideas, an attitude which transcends the limits of space and time, and in which all sense of individuality is lost. The restless, ceaseless, and purposeless activity of the world-will is a process in which the individual is but a mere puppet in the hands of Nature for the maintenance of the species or the preservation of the eternal Ideas. When we view Nature objectively, says Schopenhauer, "we find she has but one purpose—that of the conservation of every species.

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Toward this end she works through the enormous surplus of seed, through the excessive violence of the sex-impulse." "For Nature the individual has only an indirect value, namely, only in so far as it is a means for preserving the species. Beyond this is its existence indifferent to her." And, again, "she is ever ready to sacrifice the individual, not only in a thousand-fold way through the most insignificant incidents but also in a fundamental and predetermined manner from the moment when it has served the purpose of continuing the species." To attempt to find why Nature should seek to conserve the species is vain: it simply seems as if "she strove to lose none of the Ideas or permanent forms which with so much labour she has brought into being." In morality, again, the only principle of true ethical value is that of sympathy, total disinterestedness, pure altruism where every egoistic element, or every reference to one's own individuality is eliminated; and the highest ideal is the saint, who crushes, and refuses to satisfy, all the impulses which give content to the individual life.

This philosophy of Schopenhauer found a ready acceptance in the generation preceding Nietzsche's own philosophical activity. "Through four generations almost," says A. H. Braasch in *Die religiösen Strömungen der Gegenwart*, "he remained the most popular philosopher, and he was able to bask for a generation in the splendour of his fame. After the disappointment of the hopes of 1848, under the weight of the reaction an embittered mood prevailed. This mood rediscovered itself in Schopenhauer's philosophy. Likewise the religious decay of the people in the fifties found its justification before it particularly in the 'Parerga and Paralipomena' with its bitter scorn. And all unrecognized genius, all sceptical and depressed spirits, all pessimistic hearts eagerly snatched at the poisoned sweetmeat offered them in the 'Parerga and Paralipomena.'" The oppressive spirit of reaction on the part of the victorious rulers who sought "to wipe out of the German constitution the democratic blot of that year

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of shame" (1848) denied scope for free activity in religion, in thought, in political and social effort to the strong, healthy impulses of the youth of that period; and in so far as they refused to be quiescent under the Schopenhauerian doctrine of the nothingness of individuality, they sought an outlet in the sensuous life of beer-drinking and in the enjoyment of drinking-songs.

The substance of Nietzsche's argument is that individuality, in practical life, began to be crushed under the influence of definite views or theories, and that the tendency thus set in motion is carried out to its final issue through the acceptance of Schopenhauer's principles. The problem for Nietzsche becomes one of the liberation of the individual or the restoration of individuality both theoretically and practically. The questions of pessimism and disinterestedness are both involved in this problem. The failure to give due recognition to the nature of individuality and to the differences between individuals led, in Schopenhauer, to a completely abstract doctrine of equality between individuals, and to a consequent doctrine of total disinterestedness; but, reintroducing once more the claims of individuality, in an indirect manner, in the disguised form of a hedonistic standard, without, however, a critical examination of the relation of pleasure to the life of the individual, Schopenhauer is consistently driven to deny even the ultimate value of pure altruism and to formulate a pessimistic view of life.

Partly because Nietzsche regards Schopenhauer as the culminating point of the tendency throughout all philosophy, partly because Schopenhauer's philosophy was dominant at the moment, and partly because he is most concerned with it on account of his early adherence to it, his opposition to the trend of German life in his time becomes mainly an opposition to Schopenhauer. His philosophy is intelligible only in the light of this fact. His terms like philosophers, metaphysicians, psychologists, which he uses in a vague and general way, are aimed mainly at Schopenhauer. He calls his theory an 'immoralism'

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because he insists upon the element of egoism (or, more properly, individuality) which Schopenhauer had characterized as 'immoral' and because he denies the implication of the accepted morality, confirmed by Schopenhauer, that moral values belong to the constitution of the world, are imperishable and must simply be submitted to. His so-called 'hardness' and a little of his 'brutality' are to be understood in reference to Schopenhauer's undiscriminating principle of sympathy, which exalts the heart at the expense of the head. And his attitude as Antichrist is intelligible in relation to Schopenhauer's statement in 'Parerga and Paralipomena' (Band II. § 110): "To deny that the world has a moral significance is a perversity of spirit, coincident with what is called in religion by the name of Antichrist." Nietzsche just strenuously does maintain this denial and hence he is Antichrist.

II.

The nineteenth century may be regarded as in a special degree the biological period. The first half witnessed practically the foundation of the science of Embryology in the researches of the eminent Russian naturalist, Karl Ernst von Baer (1792–1876); and by the middle of the century the empirical method of investigation had succeeded in establishing itself in the region of organic life, which had hitherto been stubbornly maintained to be the sphere of the divine and the miraculous. The successful results achieved by the empirical study of organic life tended to expel gradually the notion of a divine power in Nature or the idea of a special creation by Providence, in spite of the opposition which this tendency called forth both from the church and from the steadily diminishing number of orthodox naturalists. The idea of evolution which had occurred to thinkers like Leibniz, Herder, Schelling, Hegel, but which was employed more as an *a priori* principle in their philosophies than as an actual fact requiring explanation, was gradually absorbed by biology and placed on an empirical basis. At first it remained

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badly formulated and badly substantiated; but, through the widening of the field of inquiry and through the consequent accumulation of facts, it came to assume a more definite form. When Embryology showed that the individual life underwent a progressive development from the minutest cell to its adult state, evolution was seen to be at least something actual. Observed facts also tended to support the assumption that organic life as a whole had undergone a progressive development. The main difficulty, however, which remained was not the question as to the fact of a progressive development, for this had come to be generally accepted by biologists, but the question as to the nature of the development and the agencies effecting it.

By the time of Nietzsche, the Darwinian theory of evolution and the origin of species had been formulated, and had become the centre of controversy. Its significance did not lie in its being the first to give expression to the idea of evolution, nor even the first to endeavour to explain evolution, but in its empirical character and its substantiation by a mass of verifiable facts. The theory started from the accepted fact of a tendency to vary in organisms, and argued that new species were only strongly marked and permanent varieties, naturally 'selected' or preserved on account of the favourable or useful character of the variations. Natural selection, which Darwin postulated on the analogy of human selection, almost unconsciously carried out, in the case of domesticated animals, is the preservation of those modifications which are favourable to the individual in its struggle for existence, and the rigid destruction of those individuals in which injurious variations occur. Without variation natural selection can do nothing; it merely preserves, and accumulates over a long period of time, differences of structure, the origin of which is unknown (Darwin suggested the influence of external factors upon the reproductive system), and thereby gradually produces an individual distinct from that from which it originally sprang, more improved in relation to its conditions of life, and more advanced in organization.

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The central conception of Darwinism that it is external conditions which act as the pruning knife in organic development was opposed in Germany by a number of biologists,[2] following the footsteps of K. E. von Baer, who refused to accept the Darwinian theory. They rejected the doctrine that new species gradually arose from existing species by a process of modification and the influence of natural selection. The latter, as set forth by Darwin, was held to be inadequate: it threw everything upon the hypothesis of a struggle for existence. But, according to Darwin's opponents, a struggle for existence can never lead to development; it secures at most a merely stationary condition; and it is the exception, not the normal thing.

What was fundamental, for this school of biologists, was the assimilating and organizing power of the organism itself, somewhat analogous to will, which leads of its own expansive nature to growth and development. Variability, which Darwin made his starting-point and which he seemed to regard as something like a mere chance event, followed from the character of the organism which ever tends towards more complex organization. External conditions, like food and climate, produce of themselves only a temporary change—a change which remains only so long as its causes remain, and which is a change more in quantity than in quality. Species, however, differ qualitatively, and it is this qualitative difference which must be explained. The change, if it is to be of importance for development, must be permanent or remain after its cause is removed.

The principle of beneficial varieties and their natural selection, or the principle of the survival of the fittest, is rejected; but the theory yet does not ignore the presence of external factors. In the first place, the 'adaptation' of an organism to its environment is not due to natural selection, but is a consequent of the organizing power of

[2] Representatives of these are Prof. C. V. Nägeli (1817–1891), professor at Munich; Professor Kölliker of Würzburg (1817–1905); Ludwig Rütimeyer (1825–1895), Nietzsche's colleague at Bâle; W. H. Rolph, H. Hermann, Fr. von Göler-Ravensburg and others.

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the organism which has led to that particular grade of organization and which enables the organism at that grade to react mostly in useful ways directly to stimuli. This organizing power manifests itself in the absorption of energy from the environment and in the assimilation of that energy so as to secure its maximum utilisation. It makes use of the available energy in gradually building up new substances which constitute the basis of new qualities or capabilities in addition to those which are inherited (for the rudimentary embryo contains all the properties of past generations), and in thus making the organism more complex. Hence, the condition of development is not a struggle for existence but an abundance of nourishment. In the second place, however, these properties which are inherited lie latent in the organism, and their emergence into activity depends upon external conditions. The latter determine which tendencies shall become active.[3] Good nourishment, for example, can render tendencies active which might otherwise remain inactive. Through the influence of favourable external stimuli, or even through the rearrangement of tendencies among themselves, these latent properties can assume such an intensive character, or accumulated effects can gain so much in explosive power, that they pass over into a visible state. There thus emerges a new species or type according to a process of heterogeneous creation. It arises not as a result of a modification of an already existing species, but suddenly, in an unforeseen way, so that there is no continuity between species, and each species has its own conditions of existence.

It was in the midst of these evolutionary theories that Nietzsche's thought came to be finally shaped. Like most thinkers, since the evolutionary idea was clearly formulated, he could not escape its influence, and he sought in the facts

[3] Cf. Nietzsche's view of Napoleon, *Will to Power:* 1026. "He himself was corrupted through the means which he had to employ and lost fineness of character. With another type of man he could have successfully employed other means, and so it would not be necessary that a Caesar must become bad."

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of evolution the means to a solution of his problem. Some writers, for example, Professor Simmel in *Schopenhauer und Nietzsche* and Prof. Alois Riehl in *Philosophie der Gegenwart* among others, have regarded Nietzsche as a Darwinian. Certain passages in Nietzsche seem at first sight to give ground for such a view. "To thwart fundamentally selection (Auswahl) in the species, its cleansing from degeneracy: that has been called hitherto virtue par excellence. Man should honour the fate which says to the weak 'perish'![4] Sympathy completely thwarts the law of development, which is the law of selection."[5] The question as to Nietzsche's view must not be begged by rendering the term 'selection' in these passages as 'natural selection.' Acceptance of selection as the law of development is not to be confused with the acceptance of 'natural selection,' which is a definite way in which selection is supposed to be effected. The biological view which Nietzsche adopts leads him to ask—particularly in the case of human life—not what agency effects selection but what counteracts it; and his doctrine of 'rearing' is intended to make the tendency, which is inherent in all life, effective also in human life through the removal of obstacles—such as mistaken standards of life and conduct—and provision of the necessary favourable conditions.

Nietzsche expressly opposes the Darwinian theory. He rejects environment as the supremely important factor in evolution, and insists upon the tremendous organizing power which can shape, create, and use environment. He regards adaptation as of purely secondary rank, as a consequent of the inner, spontaneous, assimilating power which is primary; he sees in organic life a tendency towards "life in its highest power"; he emphasizes the importance of the principle of economy in this connection; and the inner principle of life he calls a will to power. In this he is following the theory of Darwin's opponents, who held that in organic life there was an inherent tendency to

[4] *Will to Power:* 54.

[5] *Der Antichrist:* 7.

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develop and become more complex. Such development is towards richer and more complex forms, sharply differentiated and unique in quality. For Nietzsche, also, species which have abundant nourishment and are in general tended with supreme care soon manifest variation of the type in the strongest manner and are rich in wonders and monstrosities, while a species exposed to unfavourable conditions of a constant character remains rigid. A species, however, cannot evolve beyond a certain point; one species does not pass into another through modification; the changes, for example, in animals due to domestication are purely temporary and superficial; the type is not in the least altered. Each species has its limits; and where the limit is reached, it passes into a new species. In such a transition lies the goal of its development. In the process of development an explosive element is involved. This is specially seen in the case of genius. The concentration and synthesis of forces becomes so great that new modes and new conditions of life become imperative. The slightest chance incident serves to call forth the most significant results into the world and to change the course of the world's history.

In ranging himself on the side of this school of biology, Nietzsche is but following out a line of thought which is found in Schopenhauer, and which, indeed, may have given to Nietzsche's thought, through his early and deep study of Schopenhauer, its special direction. Schopenhauer's philosophy is, on the biological side, moulded by the theories of Lamarck, Agassiz and Chambers (the anonymous author of *Vestiges of the Natural History of Creation*). Rejecting their theological position, Schopenhauer accepts their doctrine of a gradual evolution of organic forms from the simplest to the highest, due to an inner impulse in organic life. He adopts the theory of heterogeneous creation; and the operative principle he calls will. There is a striving on the part of the will in each organism to attain the highest possible degree of objectification. There is an inner force struggling to unfold itself,

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seizing upon external material and assimilating it. Through this assimilation, the inner force becomes so intense that under favourable conditions a new type emerges, quite suddenly, quite unforeseen, and distinct from the parent of which it is the offspring. This is Schopenhauer's view of the origin of species; and it is on this basis that he formulates the doctrine of different grades of the will, which is simply the biological theory of varying grades of organization, blended with the Platonic doctrine of Ideas. Each grade, according to Schopenhauer, reveals more fully the potencies of the grade below it; the higher grade gathers up the properties scattered among various lower grades, and effects a new synthesis in such a way that the properties appear as an 'analogue' of their former self.

It is important to note, however, that two principles appear in Schopenhauer's theory: the 'will to become more' as seen in the above doctrine, and the 'will to live' which he elsewhere makes the basis of his teaching. "Everything pushes and strives for existence, where possible to organic form (that is, to life), and thereafter to the highest possible development of the same." The relative positions of the two principles remain obscure in Schopenhauer; but it is obvious that the struggle for existence presupposes a definite type of existence to be preserved; and the principle which operates in the origin of such types must be regarded as the more fundamental.

It is this principle—the will to become more—that Nietzsche adopts as the basis of his own theory, calling it a 'will to power.' The latter is to be regarded, first, as the inherent tendency of life to strive towards a higher and fuller life; secondly, as an effort on the part of every organism to secure those favourable conditions whereby its own existence is maintained and improved, and whereby the ascent to higher types is effected. Nietzsche may thus be regarded as developing that aspect of Schopenhauer in which the latter's most positive significance is to be found. In him, this positive element in the form of an effort after a richer and fuller existence becomes very prominent. His

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theory emphasises that this is essentially the nature of will. The development of psychology by his time rendered it possible for him to avoid the confusion regarding the nature of the will into which Schopenhauer fell. He refuses to divorce will from its content, from its 'whither.' There is for him no such thing as a will devoid of, or subtracted from, its end: such a will is a mere abstract generalisation.

III.

Nietzsche, in turning to the phenomena of organic life to find an objective solution to his problem, instead of taking his stand upon an inner fact of consciousness such as an 'ought' or a categorical imperative and instead of elaborating an *a priori* standard according to which men must conform in their conduct, adopts an empirical attitude. He simply says that wherever he looks in nature and in human life, even in those spheres where at first sight such a thing would be least expected, as in the church, Christianity, and asceticism, he sees the operation of a will to power. "Wherever I found life, there found I the will to power; and even in the will of the servant found I the will to be master." "And where there are sacrifice, service and love, there also is the will to be master." Taking this will to power as an empirical fact, Nietzsche seeks to reinterpret human action in the light of it. Human action is accepted by him as a phenomenon which, as such, is unquestionable, but which may be variously interpreted; and he endeavours to give a new interpretation of the springs of action as against other interpretations, particularly that of Schopenhauer. The significance of his criticism of pity, for example, lies, not in any objection he has to the giving of help to the unfortunate, but in its being directed against the view that the principle of an act of pity should be disinterestedness, disregard of one's own personality, based upon an abstract equality of one personality to another.

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From his empirical standpoint Nietzsche regards the individual as the most real thing; and the individual is the conscious, human organism. It is impossible to eliminate the individual as Schopenhauer does in his principle of disinterestedness. "Nothing," he says in the *Antichrist* (aphorism 11), "causes deeper ruin than the impersonal duty, every sacrifice to the Moloch of abstraction." The species, to which Schopenhauer subjected the individual and to the supremacy of which he saw testimony in the intensity of the sex-impulse, is an abstraction. The intensity of the sex-impulse is, according to Nietzsche, rooted in the nature of the individual, not the species. And, again, what has been called the state is completely misunderstood. The worship bestowed upon the state arises from transferring to it the glory which is fundamentally due to the achievements of creative individuals. The state is properly only a means to the preservation of these achievements, which have a significance more lasting than the life of such individuals. It creates nothing; but it gathers up and consolidates tradition; and it thereby gains a mistaken worship. The result of this is that the state, living upon the past, tends to crush individuality, which is, for Nietzsche, always the point of growth. The state thus tends to favour mediocrity as against originality; it limits the individual, and destroys the sense of self-responsibility and the consciousness of values higher than those embodied in the state.

From biology, again, Nietzsche obtains the conception of an order of rank. The latter is an application of the biological theory of different grades of organization, and of Schopenhauer's doctrine of the various grades of objectified will, to human life. The differences between men are to be taken as something real (as against Schopenhauer's abstract view of identity of all men and even animals) and as sufficient to constitute different types.[6]

[6] Cf. *David Strauss, der Bekenner u. der Schriftsteller:* 7. "All moral conduct, says Strauss, is a self-determination of the individual according to the idea of the species. This imperative is unfortunately utterly impracticable and

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There are higher and lower individuals. Each type of man, after the manner of biological species, has his own conditions of existence; only, in the case of man, these conditions appear as values. Each type of man has, in consequence, his own system of moral values. "Morality is a system of valuations which are bound up with the conditions of a creature's existence." This is the basis of Nietzsche's theory of the relativity of moral values and of his refutation of Schopenhauer's principle of sympathy. It is on this ground, too, that he emphasizes the felt need of maintaining the sense of proportion between the small and the great, and of leavening the prevailing mass of uniform mediocrity by means of strong contrasts.

It has to be noted, however, that biology itself provides for Nietzsche a safeguard against the possible danger of an extreme individualism which might seem to be contained in his emphasis upon the individual. The individual is not viewed as an atomic unit, as he tends to be under the influence of a mechanical view. The atomic individual Nietzsche holds to be a mere illusion; the real individual concentrates in himself all the results of ancestral experiences. It is due to the concentration of forces that new and higher types emerge. The goal of one type is reached when he passes into a higher type. Hence, Nietzsche is continually repeating the cry that man is something that must be surpassed and that man is merely a bridge to an ever higher type.

The ideal which dominates Nietzsche's thought, and which is obtained from biology and from Schopenhauer, is that of the 'synthetic' man. A movement is necessary, he says, for the "creation of the synthetic man." "The great synthetic man is lacking, in whom the different forces for attaining the one goal are correctly harnessed together. What we have is the multifarious man, the most interesting

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pointless, because under the concept man the most diverse elements are bound together, *e. g.*, the Patagonians and Master Strauss, and because nobody would dare to say with equal right: live as a Patagonian, and live as Master Strauss."

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chaos, that there has probably hitherto been." This ideal is not a species produced by what Darwin calls natural selection, nor is he the successful individual who wins his way to the top in the struggle for mastery and holds his position through brute force. It is the idea of organization or synthesis that is dominant with Nietzsche. Progress towards a higher type involves a synthesis of the qualities which are spread over a number of inferior types. "The majority of people are only piecemeal and fragmentary examples of man: only when all those pieces are reckoned up, does a man become known. Whole ages and whole peoples, in this sense, have a fragmentary character. . . . The only important consideration is the rise of the synthetic man; inferior men and by far the great majority of people are but rehearsals and exercises out of which here and there a whole man may arise." Each later stage gathers up and assimilates the preceding stages. The element of seeming brutality in Nietzsche's theory admits of quite another interpretation in the light of this ideal. When he says that we should "honour the fate which says to the weak 'perish'!" he means that, if selection is properly effected for purposes of development, weaker types would cease to be born and be replaced by higher types. When he says that "the amount of progress is in fact even measured by the mass of all that had to be sacrificed in order to bring it about: mankind en masse sacrificed in order to secure the growth of a single stronger new species of man—that would be progress," he means that the higher in the scale a type is, the fewer are its members, but the quality far outweighs the loss in numbers. The superman organizes in one person all the tendencies and features of numerous other individuals so as to reveal, through the new balancing of forces thus effected, new aspects or possibilities of these tendencies and forces. Even those features which mark the criminal can be so assimilated by the strong individual as then to appear in an analogous form but now made contributory to a higher and fuller level of life. The superman develops in himself

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a wealth of antagonistic elements, but he is capable of balancing them finely in relation to each other.

The rise of such a synthetic type is to be secured through a special process of rearing. This process is, in the first place, rendered possible by the rejection of that pessimism which is involved in the view that values are fixed and imperishable and must simply be accepted by man, and by the acceptance of that optimism, based on biology, which sees that all creative power resides in the individual and that values are created by man himself. The environment can be moulded so as to be made subservient to the emergence of higher types. For this latter aim there must be careful husbanding of human resources over successive generations, hard discipline and healthy living on the part of the members of each generation, and the establishment of those favourable conditions under which individuality may have scope to manifest itself, and genius may both be created and, where present, be allowed to emerge. But, in any case, the great abilities of the individual stand out of all proportion to what he himself has done, sacrificed, and suffered; for what he is, his forefathers have paid the price in struggling, labouring and persevering. This steady effort in overcoming hostile circumstances is a prime condition for the appearance of a higher type. And to supply the motive power to the individual to give his active co-operation in this process of organic development Nietzsche formulates the doctrine of the 'eternal cycle,' which he in no way pretends to have any more ultimate validity than that of a useful myth.

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RECENT PHILOSOPHICAL-LEGAL LITERATURE IN FRENCH, GERMAN AND ITALIAN (1912–1914).

MORRIS R. COHEN.

THE recent death of Wilhelm Schuppe emphasizes the passing away of the older generation of philosophical teachers who, on the basis of their own philosophical systems, could make notable contributions to the field of jurisprudence.[1] But while professional philosophers have been withdrawing from this field, jurists, like other intellectual workers, have been driven more and more by the exigencies of their own work to a philosophical consideration of their own fundamental problems. Besides the general breakdown of the ideaphobia which was so fashionable in the latter part of the nineteenth century, special circumstances have brought issues involving the fundamental principles of jurisprudence to the foreground. The adoption of the German Civil Code which throws upon jurists the task of determining what is "good faith" and "morals," the adoption of the Swiss Civil Code with its explicit recognition of the judges' power of supplementary legislation, and the rise in France and other countries of social legislation[2] involving new forms of responsibility and consequent new methods of interpretation,[3] have all led to the breakdown of the classical theory according to which the law springs complete and fully armed from the brow of a somewhat mythical being called the will of the sovereign. German Historicism as well as French and

[1] Pagel, *Beiträge zur philos. Rechtslehre* (1914), contains a disciple's account of the significance of Schuppe's work in this field.

[2] *Oeuvre sociale de la Troisième Republique*, par MM. Astier, Buisson, etc., *avec preface de M. Deschanel* (1912).

[3] Thery, *Les caractères généraux de la réglementation jurisprudentielle du contrat de travail en droit français* (1913). See esp. pp. 234–236.

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English Positivism had all kept the eighteenth century faculty psychology with its air-tight division of the mind into reason and will, and consequent sharp *a priori* distinction between the functions of the legislator and the judge. As there are many demands of practical life which call for just such a sharp distinction between the function of the legislature and that of the courts, the classical theory managed until recently to hold its sway despite occasional mutterings of intellectual discontent.

The general intellectual and practical circumstances referred to above have, however, led to an organized revolt against the traditional view. This may be dated from Geny's *Méthode d'interprétation et sources en droit privé positif* (1899). With massive learning and an overwhelming wealth of illustrative material, Geny pointed out that the legislator cannot foresee all and foreordain everything, and that the interpreter of the law must, therefore, engage in a free scientific inquiry into the social principles applicable to given cases, if the law is to be developed along lines satisfying the needs of modern life. So long as the duty of the judge was conceived as that of a faithful but passive mouthpiece of a pre-existing law, questions of social policy were no part of legal science. With the recognition, however, of the law-creating function of judges and jurists, questions as to the end or the policy of the law have become unavoidable. This has led to a reconsideration of the views as to the relation of law to ethics, logic, and social science, and has thus raised in significant form, philosophical questions as to legal methodology. Towards the latter part of the nineteenth century, the view generally prevailed—witness the works of Windscheid and Laurent—that the main outlines of legal doctrine had received a definitive form and that only various details remained to be determined.[4] Our age, however, delights to question fun-

[4] See the confident assertion by the authors of the *Supplement au repertoire de Dalloz* (1887), Vol. I, pp. vii–ix, that legal doctrine had achieved "a complete development." A striking parallel may be found in Clark Maxwell's inaugural address at the opening of the Cavendish laboratory in which he

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damentals in all realms. But it is not skeptical. It has found a simple way of establishing new fundamentals by means of the principle of historical evolution. If we can show that any legal or ethical principle is the result of or expresses a tendency of evolution, the principle of universal progress will at once make it as canonical as the older ways of Providence.

This procedure is well-illustrated in Duguit's *Les transformations générales du droit privé* (1912) in which, under cover of a survey of the transformations of private civil law since the adoption of the Napoleonic Code, Professor Duguit attacks the whole classical theory of law, root and branch. Professor Duguit regards the notion of subjective rights as too metaphysical for any positive legal science, and endeavors to show that legal progress is away from a metaphysical, subjective, and individualistic conception, as embodied in the Declaration of the Rights of Man, and the Code Napoleon, to a positive, objective, and social system of rules. Thus the rapid growth of our corporation law shows that no actual will is necessary in order to have subjects of legal rights—unless we take refuge in the mystic doctrine that business corporations have wills or souls of their own. Thus also the notion of responsibility as based on *fault* (twin sister of theologic 'sin') is giving way to the conception of responsibility based on the objective determination of the risk involved in a transaction or undertaking. The notion of property as the absolute right of individual dominion, he shows, has given place to the notion of property as a social arrangement for the conservation of wealth and therefore essentially subject to constant social regulation or restriction. With the abandonment of the notion of subjective rights, there goes, of course, the whole classical theory of juristic acts, transactions, etc.

seems to think that the great discoveries of physics had already been made and that all that was left to laboratories was to perfect the determination of physical units. See Maxwell's Collected Papers or, History of Cavendish Laboratory (1911).

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Hence Positivists as well as Catholics have rushed to the defence of the doctrine of subjective rights.[5]

The most effective answer, however, to Duguit's book comes from legal history itself which, like nature, does not run for the convenience of our generalization but has an irritating way of showing progress in opposite directions. Thus property has, in the period covered by M. Duguit, not only become more subject to social regulation but also (as in the case of copyright, or in the abolition of communal property) become more individualistic.[6] This is well illustrated in an excellent survey of the actual legal changes of the nineteenth century by Charmont, *Les transformations du droit civil* (1912). It treats more in detail the changes in family law, the legal position of women and children, as well as the increasing restrictions on private property; and in the last three chapters gives one of the best discussions we have of the theory of risk, fault, and responsibility, in the light of modern industrial conditions and legislation.

Modern industrial conditions have not only scandalized classical jurisprudence by developing the notion of an objective responsibility independent of all personal fault but even more so by the new notion of *abuse of rights.* As a legal right has always been held to define the limits within which one may legally act, it seems that an abuse within one's rights is a logical impossibility. Legal abuse can only begin, it would seem, where rights end. But the exigencies of life sometimes overcome even the difficulties of juristic logic, and French courts have, in passing on strikes, lockouts, and boycotts, been forced more and more to resort to this notion of abuse of rights. Here, as elsewhere, the seeming defiance of logic turns out on closer examination to be the successful assertion of

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[5] Archambault in *Annales Philos. Chrétienne,* 1912, pp. 225–257; Richard in *Revue Philosophique,* Mars 1912, pp. 225, 246; A. Levi, *Contributi ad una teoria filosofica dell' ordine juridico,* pp. 260–283.

[6] Cf. Plastora, *Nouvelles tendances dans le droit—Libertés et patrimonies* in *Revue trimestrielle de droit civil,* 1912 m. 4.

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practical needs over against an inadequate theory. The classical jurisprudence regarded the law as a body of definite *existing* principles which courts were merely to apply. Now, however, transformism has invaded also the realm of legal thought, and it is beginning to be recognized that as new situations are coming up, courts must in fact make law, or at least modify old rules by stretching or restricting them. The law gives the employer the general right to engage or discharge anyone he pleases, and to the workman the corresponding right of entering or leaving the employment. But, does the employers' right include the right to discharge men because they belong to a union, and does the workmen's right to leave include the right to do so in order to compel a fellow employee to enter the union? Logically it seems we must answer in the affirmative. But courts feel that social order or the interest of the public demands a more qualified answer. And this is accomplished by the general principle that rights are bestowed for social purposes, and therefore any exercise of one's rights which leads to anti-social results, is to be regarded as abusive. The doctrine is thus a general principle whereby the social end of a right is made to determine its varying limits in different cases. It thus seems a clear instance of legal pragmatism.

The whole doctrine is critically examined in Roussel's *L'abus du droit* (1914). Roussel makes some telling points against that soft-heartedness which would banish all strife from this world, and in his insistence on the value of clear thinking. In the main, however, his objections rest on the assumption that law, as distinct from morality, must be absolutely definite and, therefore, judges must not let their sense of humanity blur the clear outlines of the rights fixed by the law. But this assumption that the whole law is a logically closed system, which no longer has to draw its nourishment from the breasts of its mother Justice, is precisely what the newer jurists are disputing. In harmony with the anti-intellectualism now prevalent in popular philosophy, and characteristic of other forms of

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modernism, they no longer regard judge and jurists as automata for unfolding the logical content of fixed legal concepts but as the living organs of society for recreating the law in harmony with daily needs—the theory of the division of power to the contrary notwithstanding.

It is natural for reformers or protestants to divide themselves into sects. Some emphasize the opposition to logic and juridical construction, in contrast to common sense humane sentiments, and the teachings of sociology (Fuchs, Wüstendorfer[8]); while others insist simply on more adequate concepts to enable the law to *develop* (Stampe).[9] Some insist that the judge is to legislate only *prœter legem*, to fill up the blanks in the legal system (Danz).[10] But others claim that a unitary method requires judicial legislation even *contra legem* (Wüstendorfer[11]). Some contend for the claims of the living law of to-day and its needs, determined by social science, in contrast to the will of the legislator determined by history (Kohler,[12] Ehrlich,[13] Kantorowicz[14]); while others insist on social interests in harmony with the

[7] Fuchs E., Juristischer Kulturkampf, 1912.

[8] Wüstendorfer *Die deutsche Rechtsprechung am Wendepunkt. Archiv für civil Praxis*, 1913, Vol. 110. Hostile to logical 'construction' in law is also Müller-Erzbach *Die Relativität der Rechtsbegriffe* in *Jherings Jahrbüchee* (1912), Vol. 61. In his long review, however, of Jung's book, in the *Zeitschrift für d. gesammte Handelsrechts* (1913), Vol. 73, Müller-Erzbach seems to have become afraid of the emphasis on sensibility, as opposed to logic, in law.

[9] Stampe, *Grundriss der Wertbewegungslehre*, 1912, and *Aus einem Freirechtslehrbuch*, in *Archiv für d. civil Praxis*, Vols. 107, 108, and 110. Stampe seems to have done the most work in the direction of actually applying the principles of the *Freirechtschule* to the concrete subject matter of the law.

[10] Danz, *Einführung in die Rechtssprechung*, 1912, and *Richterrecht*, 1912. See also his *Fortschritte durch Erkenntis der Lücken im Gesetz*, in the *Deutsche Juristenzeitung*, 1914, pp. 7 ff.

[11] *Op. cit.* It is curious that Wüstendorfer, who argues that logic should occupy a subordinate position in the interpretation of laws, should attach such great importance to a unitary method in a subject that might well admit of many methods so far as practical interests are concerned.

[12] Kohler, *Recht und Persönlichkeit* in der *Kultur der Gegenwart*, 1914, esp. pp. 24, and 220 ff.

[13] Ehrlich, *Grundlegung der Soziologie des Rechts* (1913).

[14] Kantorowicz, *Was ist uns Savigny* in *Recht und Wirtschaft*, 1912.

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historically ascertained ends of the legislator (Heck[15]). Some personify the culture or ideals of the age so that they suppose definite juridical deductions can be made from them (Berolzheimer[16] and Kohler[17]); while others insist on a more inductive procedure based on a trained sense of what is required in individual cases (Jung[18]). In their common insistence, however, that the legal system is not eternally self-sufficient but must always continue, through judge and jurist, to draw on social science, ethical sentiments, or culture of the age, these writers defy the historicist and positivist condemnation of all rational or non-positive law. Hence they are accused by their opponents (Bartolemei,[19] Gareis[20]) of undermining the value of the law by opening the door to arbitrary decisions which would be subversive of all the social interests that depend on the certainty and impartiality of the law.

The one who might fitly be called either the stormy petrel or the enfant terrible of this *Freirechtsschule*, Kantorowicz, has not hesitated to ascend to the source of the modern historical school, and lay hands on Savigny himself, showing the limitations of the latter's conception of

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[15] Heck, *Gesetzesauslegung und Interessenjurisprudenz* (1914), the most extensive and systematic study we yet have of the process of legal interpretation. There is some impropriety in including Heck among the Freirechtler, because of his rather narrow adherence to the imperative theory and his exaggeration of the extent to which the will of the legislator is determinate. But the logic of the insistence on social interests forces him to make significant concessions. Thus the judge "should protect those interests which exist at the time of the application. Only the living have rights. But each statute already belongs at the time of its application to the past" (p. 14). He also admits that Fuchs has rendered great service to jurisprudence by his warm-hearted appeals, and Kohler by emphasizing the creative function of jurisprudence (pp. 215, 277).

[16] Berolzheimer, *Moral und Gesellschaft des 20 Jahrhunderts* (1914), already noticed in this JOURNAL, Vol. XXV, p. 121. Cf. also Berolzheimer, *Die Gefahren eines Gefühlsjurisprudenz* (1911).

[17] Kohler, *op. cit.*

[18] Jung, *Problem des natürlichen Rechts* (1912).

[19] Bartolemei, *La ragione della jurisprudenza pura* (1912).

[20] Gareis, *Moderne Bewegungen in der Wissenshaft des deut. Privatrechts—Rektorsrede* (1912).

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jurisprudence and the inadequacy of his criticism of the old natural law (*Was ist uns Savigny*, 1912).

This has brought forth a carefully elaborated apologia for Savigny by Manigk, *Savigny und der Modernismus im Recht* (1914), in which the attempt is made to show that it is these modernists who have the wrong conception of jurisprudence, and that when they are right, they have already been anticipated by Savigny himself. As is usual in such work, texts are frequently tortured to make them confess the desired meaning. Nevertheless there is here enough genuine criticism of the modernists' attack on the historical school to warn us that all sharp contrasts are but pedagogic devices to make our intention clear. They may express a tendency but cannot pretend to strict historical accuracy in point of fact. Manigk's book leaves one with a very sober sense of the complexity of legal method and the vanity of monistic attempts to claim everything for a single method or panacea, no matter how new.

When law is viewed in the process of being made, rather than as a completed, sanctioned system, the state or sovereign can no longer be regarded as the exclusive source of all law. This is vigorously brought out in Jung's *Problem des natürlichen Rechts* and Ehrlich's *Grundlegung der Soziologie des Rechts*. Jung, who in previous books had attacked the notion of positive law as a closed logical system, here takes the growing character of the law in the process of interpretation for granted. What, however, is the method according to which this is done? In spite of a too liberal reliance on the principle of social eudæmonism based on popular Darwinian evolutionism, Jung, more than any other modern jurist, emphasizes the primacy of the individual case. Law grows out of the effort of man to protect himself against wrong, which, following Schopenhauer, Jung regards as the primary positive idea of the law. Jung carefully examines the relation between the feeling of right and wrong in a given case and the principles which jurists assert as the justification or basis of

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the decision, and thus gives us something of actual juristic logic (§ 7). But his acceptance of the popular inadequate conception of induction (which makes principles somewhat gratuitous afterthoughts) and a pseudo-scientific belief that the determination of what is, is superior to the determination of what ought to be, prevent the successful carrying out of this admirable attempt to give us a theory of natural law or justice as an actual source of the law.

Ehrlich's primary interest is in what he calls living law, the law which is actually operative and controlling in the affairs of men. From this point of view he is compelled to join the protest against the exaggerated importance hitherto attributed to the state in the field of law. The state, according to him, is a late comer in this field and does not even to-day exhaust the life of the law. Most people obey the law because of custom and not because of direct coercion by the state. The main work of the state in the realm of law is rather educational, to see that the citizens are brought up in habits of obedience. The state and its juristic organs are responsible only for adjective law, *i e.*, or the law that regulates the remedies which protect the living law. The norms for deciding cases become operative only in litigated disputes which, from the social point of view, represent the pathology of the law. The family that goes to court is pretty much broken up, as a family. To the jurist, litigation is the primary matter, but in the mind of the community, the concrete legal institution. Like Kantorowicz, Ehrlich sharply opposes the historical school, which, as in Savigny's treatise on Possession, emphasizes the past at the expense of the present. History cannot be the basis of law any more than paleontology can be the basis of physiology. Our knowledge of the past of the law is more dependent on our knowledge of the present than the latter is on the former. The vital part of the law then must be sought not in the past, but in present day arrangements, not in a mythical folk mind but in the actual social arrangements of to-day. Hence a new program of legal studies. The actual system

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of property holding of Austrian peasants will not be found in the Code, which is based on Roman law and not on actual practice. The actual law must be sought in archives, notarial records, acts of incorporation, notices of the formation and dissolution of partnerships, etc.

Ehrlich's book suffers from the fact that it draws no clear account of what he means by law and how he distinguishes it from customs and morals (cf. p. 136). The lines between law and morals, he tells us, are shifting. This, however, is all the more reason for demanding clear ideas. Thus it may be urged that what Ehrlich calls living law, is simply custom, which, as such, is not law at all, though it may become so under certain conditions. Moreover, his assumption that state law merely regulates procedure, and that the latter is subsequent to the substantive law, is not easily borne out by historic fact.

An energetic though laborious protest against the overemphasis of custom or social practice as a source of law, is found in Oertmann's *Rechtsordnung und Verkehrsitte* (1914). In opposing the claims of social science in the interpretation of law, he asserts that all law is either the work of the state, or becomes law because recognized by the state; and he even goes far to deny the old claim of the historical school that law does arise in custom. Not social practice, but the continual application of a rule by the courts, makes it law. In thus emphasizing the law-making function of the courts he comes very near the position of the *Freirechtler*, that judges must put the breath of life into the dead sentences of the statute book.

While those engaged in civil law have been thus engaged in trying to make civil law more flexible, those engaged in public law (which is popularly supposed to be an indeterminate branch of politics) have been trying to elaborate a rigorous logical technique. An unusually able book representing the latter movement—showing familiarity with Kant and Sigwart as well as with the police laws of the various German communities—is Walter Jellinek's *Gesetz, Gesetzesanwendung und Zweckmässigkeitserwägung* (1913).

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Starting from the fact that courts have to pass on the legality of administrative acts but have no authority to inquire into the appropriateness or necessity of such acts, Jellinek tries to determine the meaning and limits of this administrative freedom or discretion. In the course of this inquiry he examines carefully the logical morphology of the law in the process of its application. He has some pertinent remarks on the imperative theory of the law, though like his distinguished father he holds that all law is as such of state origin. While he holds tenaciously to the view that the interpreter of the law is engaged in a process of determining an historically objective fact, a meaning actually intended by the legislator, his treatment of what he calls the undetermined concept is very suggestive in showing the large share of freedom in the process of interpreting the law.

A similar attempt for French law, though more narrowly legal, is Michoud's *Étude sur le pouvoir discrétionnaire de l'administration* (1913).

More revolutionary in its attitude toward established ideas in public law is Duguit's *Transformations du droit public* (1913). Attacking rigorously the notion of sovereignty as appropriate only to Byzantine and mediæval conditions, M. Duguit suggests the notion of public service as the fitter basis for public law, the responsibility of public officials to be determined accordingly. Laws are binding not because they are willed by the state, but because they are the conditions under which human beings can live in society. Thus on the basis of extreme positivism M. Duguit comes to a position very near that of the old natural law with its insistence on the judge's veto over unconstitutional legislation and the strict responsibility of public officials.

An American lawyer reading for the first time Stammler's introductory article to the *Zeitschrift für Rechtsphilosophie in Lehre und Praxis*, or the concluding article in the collection *Systematische Rechtswissenschaft* (*Kultur der Gegenwart*), is sure to suppose that he is in the presence of the

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traditional German philosopher trying to deduce everything from *a priori* principles but remaining in the cloudy region of abstruse abstractions.[21] Yet Stammler is primarily a jurist who, taking the distinction between just and unjust law seriously, and finding no light on the essence of that distinction in the writings of the historical school, has been led to an adaptation of the Kantian philosophy as supplying the needed criterion. Starting with the Kantian distinction between the changing and conditioned *content* and the unconditioned unchanging *form* of the law, Stammler tries to determine on the basis of the Kantian epistemology the eternal form of all just law. He naturally rejects as empirical all ends such as material comforts, national integrity, or the cultivation of the arts and science, and sets up the pure form of a community of free willing men as the absolute end valid for all times and places. On the basis of this absolute end Stammler and his followers try to determine the limits of freedom of contract, the proper interpretation of the German Civil Code provisions for good faith (s. 242) and good morals (s. 826) and the proper application of (s. 825) the Code of Civil Procedure in the case of goods sold at auction.

In the high and rarefied air in which the argument starts it is hard to see how Stammler can effect a transition from such formal concepts as the transcendental unity of apperception to any actual content of the law. No more than Kant does he succeed in showing how a pure logical form can, apart from material premises, determine the actual content of a law; nor can he disprove the fact that all sorts of opposing claims in controverted questions are equally compatible with the essentially vague ideal of a community of free wills. Stammler, like other Neo-Kantians, seems to

[21] For an examination of Stammler's philosophy see Breuer, *Der Rechtsbegriff auf Grundlage der Stammlerischen Sozialphilosophie* (No. 27 of the Supplements to the *Kantstudien*), 1912, and Wielckowski, *Die Neukantianer in der Rechtsphilosophie* (1914). See also Fränkel *Die kritische Rechtsphilosophie bei Fries und bei Stammler* (1912). The present leader of the Fries school, Nelson, has given us a short but weighty pamphlet in this field, *Die Theorie des wahren Interesses und ihre rechtliche und politische Bedeutung* (1913).

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me to confuse the logical form of consistency, indispensable to all rational effort in law and ethics, with the ultimate end or ideal which must necessarily involve a matter of choice. Just as reason cannot prove all propositions, but presupposes certain premises as accepted, so reason cannot determine the ultimate end but can only show the fitness of means to ends.

The rich content of this *Zeitschrift* as well as Stammler's *Theorie der Rechtswissenschaft* (1911) serve to show the justice of Simmel's remark that in works of this kind it is not impossible for solid superstructures to rest on very flimsy foundations. But perhaps it would be more just to say that Stammler's legal results form a solid building resting on earthly experience, but to its indweller it seems supported by logical threads from the epistemologic heaven.

A very clear exposition of Stammler's point of view (though not avowedly designed as such) is Djuvara's *Le fondement du phenomène juridique* (1913). The elaborate technical epistemologic machinery is lost in the passage across the Rhine and the angular logical rigidity softened in the French garb. But the two fundamental characteristics of Stammler's viewpoint, the emphasis on the categories of pure reason, as the source of the specifically juristic element in social facts, and the attempt to derive all rights and obligations from the free meeting of minds, emerge very clearly. On an independent basis, but leading to the same result is Del Vecchio's *Il concetto del diritto* (1912), now translated into English as Part II of his *Formal Basis of Law*. Neither Djuvara nor Del Vecchio, however, seem to take notice of the insuperable difficulties which the facts of the legal order such as employers' liability, or the laws of inheritance, offer to the theory which makes all obligation rest on consent. If the state needs my land, justice may be said to demand that I be given the fair market price. But does that mean that I necessarily do consent to part with the house, the treas-

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ured emotional associations of which nothing else in the world can replace?

A similar result, from a professed Neo-Hegelian starting point, is found in Kohler's general survey of the legal situation, *Recht und Persönlichkeit in der Kultur der Gegenwart* (1914), and in his more technical book on the law of competition, *Der unlautere Wettbewerb* (1914). Both attempt to derive all legal obligations from the rights of personality. Kohler was one of the pioneers of the sociologic interpretation of law, but his attempt to derive the rights of competing business corporations from the rights of personality leads to the weirdest kind of *Begriffsjurisprudenz*. Does personality for legal purposes mean anything more than a point which is the focus of rights and obligations? If we once see that rights and obligations are the primary objects of legal science and that associations represent groups of rights and obligations in some respects like and in some respects different from those possessed by single individuals in similar legal situations, we shall be spared a great deal of absurd metaphysics. In no field does the baneful and fruitless word *reality* cause so much confusion as in the field of jurisprudence and more especially in the question as to the reality of legal personality.

Kohler's *Recht und Persönlichkeit* was written before the war and ended with a very inspiring survey of the position of international law; but after the war broke out he saw fit to recant his noble vision. It is a great pity that a scholar of his standing should have descended from the heights where the search for impartial and international truth reigns supreme, into the arena where rage the temporary conflicts of hatred and economic interests. In his recantation Kohler restricts humanity to Germany, Turkey and Italy (this was before May 1915): and his intemperate denunciation of England will certainly not add to his reputation for scientific sobriety.

One of the few avowedly philosophical attempts of the *Freirechtsschule* is Radbruch's *Rechtsphilosophie*, and for a book of this title it sticks rather close to juridical matters.

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Radbruch does not attempt, like Stammler or Kohler, to storm the empyrean; but gives us a careful analysis of what is meant by the validity of law, and a fresh account of the relation of law to politics. Radbruch is not taken in by the over-hasty monism which refuses to take note of the distinction between the normative and the existential standpoints. But his reliance on the Windelband-Rickert philosophy leads him to overemphasize the pathos of legal thought which must move in both the theoretical and the practical realm. "Youthful idealism and hunger for reality will always seek to construct bridges leading from jurisprudence to ideals and life; the resignation of manhood will insist on isolation and self sufficiency."

Written along the traditional Hegelian lines of the Italian School are Petrone's *Il diritto nel mondo dell spirito* (1912) and Rensi's *Il fondamento de diritto* (1912). The second volume of Barillari's *Diritto e filosofia* (1912) is a synthesis of Kantian and Hegelian elements to produce a juridical epistemology based on the conception of absolute knowledge. Biavaschi's *La crise attuale della filosofia del diritto* (1913) is written from the religiously orthodox standpoint, but, beyond some suggestive criticisms, does not offer anything new.

As the Italian universities require a separate course on the philosophy of law in the law faculties, books on what the Germans call the general theory of law are called philosophy of law in Italy. This is certainly the case with Miceli's *Principii di filosofia del diritto* (1914), an admirably gotten up volume which, in spite of 900 pages, is of small pocket size and altogether in substance as well as in outer form one of the most satisfactory text-books on the subject. In spite of the title of this book, and of his larger four volume book bearing a similar title, Miceli insists that a philosophy of law is impossible, and what passes as such is a mixture of ethics and of the general theory of the law. But why may not both ethics and the general theory of the law be philosophical? Miceli's objection is based on the traditional conception of phi-

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losophy and the gratuitous assumption that reflection on empirical material cannot rise to "high speculative concepts." Somewhat similar in scope to Miceli's book—though the very antithesis in external makeup—is Cosentini's *Filosofia del diritto* (1914) which embodies a great deal of the material of his earlier book, *La Reforme de la législation civile* (1913). Cosentini belongs to the school of liberal Positivism and conceives of the philosophy of law as a handmaid to the sociology of law. Philosophy must not be too critical, but must restrict itself to an examination of the logical and phenomenologic essence of juridical facts and their relation to other social facts. Social ideals, however, he admits, are actual facts of the utmost importance in legislation and in judicial law-making through the filling up of the lacunæ of the law. Hence the philosophy of law must not restrict itself to a study of the law as it is, but must help in its transformation.

Belonging in the main to what might be called the school of idealistic positivism is A. Levi's *Contributi ad una teoria filosofica dell' ordine giuridico* (1914), a development of his earlier book, *La société et l'ordre juridique* (1911). Levi is a devoted follower of the venerable Italian philosopher Ardigo. He insists on the possibility of a philosophy of law that is not merely an historic or ethnographic jurisprudence or the merely general part of legal science. But he rejects all attempts at deontology. He seeks to base his philosophy of law on psychology and gnoseology, a positivistic adaptation of epistemology. He sees an analogy between the reaction of modern jurisprudence against the theory of innate rights prior to the existence of society, and the reaction of soulless psychology to the existence of a substantial self. The problems of the philosophy of law thus include (1) the presuppositions of juridical experience and the criticism of the common consciousness of legal thought, (2) the concept of law and the nature of the juridical order leading to a critique of the technique of laws, and (3) the indications of the tendencies of juridical evolution and the criticism of the historical

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consciousness of right. It is thus seen that while the deontologic standpoint is rejected and we are repeatedly warned that we must not give norms to experience, it is nevertheless kept in a powdered form in the treatment of the separate questions.

While jurists dealing with their own subject matter have thus been raising vital philosophic issues from new points of view, their results when they consciously turn to general philosophy do not seem to me to be of much value; for, when they leave their own field they are inclined to accept inadequate traditional principles that were framed without regard to the specific subject matter of the jurist. This seems to me to be well illustrated in the introductory volume of Geny's *Science et technique en droit privé positif* (1914). Geny, indeed, attempts to avoid this difficulty by choosing freely elements from scholastic common sense, Bergsonian intuition, and the psychology and sociology of positivism; but very little of his "*approfondisement*" of legal method moves outside of the traditional and somewhat antiquated logic and psychology embodied in such books as Ribot's Evolution of General Ideas and the ordinary text-book of formal logic. The footnotes, indeed, contain an astonishing number of references to modern classical treatises in the methodology of the natural and social sciences, yet the substance of the book impresses one as nothing more than a collection of the commonplaces of familiar epistemology illustrated with legal material. The fundamental distinction of the book between science and technique (the former dealing with what is given and the latter with what is constructed) is certainly not clearly thought out. (Witness, for example, the reference to technique as "the work of artificial if not arbitrary will," p. 96.) There are, of course, many valuable observations in the book, but these, like the remarks on analogy (157–160), are independent of the main thesis and were, indeed, substantially embodied in Geny's earlier book.

While Geny's philosophic ecclecticism reminds one of Cousin, the elaborate bibliographic footnotes, the formal

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longwinded introductions and divisions of the subject, and other ceremonious delay in getting down to the subject matter, and, above all, the naïve faith in epistemology, show the tremendous influence that Germany has been exercising lately on intellectual France. Geny is impressed by the fact that Berolzheimer's five volume treatise on legal philosophy devotes the first volume to epistemology. But is there a single problem in the four subsequent volumes of Berolzheimer's book that is decided by reference to the first? I can see no more connection there than between the saying of grace before meals and the composition of the dishes.

The large volume of M. Fabreguettes, entitled *La logique judiciaire et l'art de juger* (1914), contains some interesting remarks on evidence and other matters, but bears little on juristic logic. Much more of the last topic will be found in an unpretentious contribution to the Wach *Festschrift* (1912) by Wehli, *Beiträge zur Analyse der Urteilsfindung*, Vol. I, pp. 429 ff.

I have restricted this survey to philosophic efforts on the part of professional jurists. I ought to mention, in conclusion, several noteworthy attempts to enlarge philosophic technique to enable it to cope more adequately with legal as well as other material. The philosophy of Husserl, like that of Meinong, with its attempt to free the consideration of the essence or character of things from the question of their existence, seems to me of great promise for jurisprudence in the direction of simplifying needlessly complicated problems like that of legal personality, animus and corpus in possession, etc. Unfortunately, however, the study in Husserl's *Jahrbuch* (1913) devoted to this topic, *Die apriorischen Grundlagen des bürgerlichen Rechts*, by Reinach, is too much dominated by an unclear conception as to what is *a priori*, and the common weakness of those unacquainted with legal history, namely, of regarding certain arrangements as logically necessary when they are merely the results of historical accident.

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Another effort to develop a Kantian *Kulturphilosophie*, along lines suggested by Hermann Cohen's *Ethik des reinen Willens*, is Münch's *Erlebnis und Geltung* (supplemental monograph, No. 30, to the *Kantstudien*). Münch tries to show how the regulative function of ideas determines the content of practical judgments and how ethics as a transcendental philosophy of history can enable us to determine which system of value represents concrete reason for the present state of civilization. Münch makes out a very clear case against philosophies of the type of Carlyle, Hegel, or the popular evolutionists who think that everything that triumphs is necessarily in the right. But he has not as yet offered us any satisfactory criterion to enable us to choose which of the historical systems of value are the preferable ones. Indeed he himself seems very close to the Hegelian point of view.

On an entirely independent basis, philosophically and juristically, is Walter Pollak's *Perspective und Symbol in Philosophie und Rechtswissenschaft* (1913). Every science is, as a creative activity and vital effort, historically determined by certain volitions and interests, and in turn modifies these. The question then may be raised not of the absolute correctness of a science but of the extent to which it satisfies the vital demands which brought it forth. In the elaboration of perspectives or points of view, symbols or picturesque expressions appeal to the scientific imagination so as not only to give it satisfaction but also to suggest further research and the discovery of new relations. This is applied in a very suggestive way to the field of law and to the way in which juristic conceptions are determined by laws, customs, and the world-view of the time, but in turn modify all these. Juristic method thus has to use history, sociology and even theology as heuristic principles.

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BOOK REVIEWS.

DEMOCRACY AND EDUCATION. By John Dewey. New York: The Macmillan Company, 1916. Pp. xii, 434.

The thinking world has long since learned to expect from Professor Dewey matters of prime importance. Of the general significance of this volume it is perhaps enough to say that, in the reviewer's opinion, it is the most important of Professor Dewey's productions thus far. In defiance of possible imputations of chauvinism, the reviewer will also say that it would be difficult to overstate its import and value for all students of education, philosophy, and society.

The sub-title of the volume is "An Introduction to the Philosophy of Education." Most books that have appeared under that caption have left recollections either of an external, mechanical application to education of a philosophy fashioned for other purposes; or of a conception of the philosophy of education in which the philosophical element is regarded as a particular 'part' or 'phase' or 'kind' of philosophy concerned with the particular problems of education. But the thesis of this volume is that all philosophy is, at bottom, social philosophy; and all social philosophy is the philosophy of education. Hence the significant, not to say startling, statement: "The most penetrating definition of philosophy which can be given is that it is the theory of education, in its most general phase."

William James was fond of quoting Chesterton's statement, "The most important thing about a man is his philosophy." It may be added that the most important thing about a man's philosophy is its conception of philosophy—its opinion of itself, of its origin, and its mission. A philosophy, therefore, which believes that the 'most penetrating' definition of itself identifies it with the philosophy of education and in the end with the philosophy of democracy is something that demands attention. There is no doubt of the 'penetrating' character of this definition. It quickly penetrates all conceptions of philosophy which find its origin in a 'pure reason' or a pure 'sentience' that by some inexplicable cosmic accident or 'fall' is in but not of our human world; and it penetrates all theories of education which are *a*

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priori deductions from ready made systems of such philosophy. In this brief notice only the main headlands of the argument can be pointed out.

In the face of the 'ineluctable fact' of the death of its individuals, life in all its phases and contents has to perpetuate and develop itself by transmission, by communication. It must then to some extent be social in character. And the more complex the life-bearing being, the more communicatory, the more social it is obliged to become. This social process of transmission by which life maintains and develops itself *is* education. Education is then no mere 'auxiliary;' it is literally a matter of life or death.

The point at which ideas, the capacity for reflection, appear in this process marks a great epoch in its development. It means the inestimable power of remembered successes and failures, and the capacity for utilizing them in future operations. And with a little further development, it means a theory of education, a deliberately planned inquiry and experimentation. Here is the point at which philosophy gets its identity with the theory of education, and at which the whole method of Professor Dewey's treatment appears. If we take seriously the view that ideas, theories, have their origin in and their operations determined by this process of perpetuating life through education, philosophical ideas and theories can be no exception. But, if this were all, it could be said: "Neither can any other ideas be excepted; and if all ideas are 'educational' the meaning of the term 'educational' becomes too diffused and thin to be useful." Professor Dewey's exposition goes on to show (1) how in point of content, philosophical problems, like the problems of education, are more directly concerned with active 'attitudes' and 'dispositions' than are the sciences which deal with specific fields of nature and society; and (2) how, historically, 'the fact that the stream of European philosophical thought arose as a theory of educational procedure, remains an eloquent witness to the intimate connection of philosophy and education.'

But all this is 'instrumental' to the matter which Professor Dewey has particularly at heart in this volume, and indeed everywhere,—namely, 'the implications of democracy in human association' and therefore, as we have seen, in education and philosophy. "In all social life whatever, even in a gang of thieves, we find (1) interests held in common and (2) interaction and cooperation with other groups." "How numerous and varied are

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the interests which are commonly shared? How full and free is the interplay with other forms of association?"—these are the test questions for every society; and they both point to democracy. The first means 'not only a mutual sharing of interests but a reliance upon the recognition of these mutual interests as the chief factor in social control.' The second demands 'not only free interaction between social groups but the continuous readjustment of social habits in meeting the new situation produced by varied intercourse.'

With inexorable continuity the pedigree of the 'problems' of government, of education, and of philosophy is traced back to the disjunctions and conflicts due to the failure to recognise both these 'criteria of human association.' When the social, human aim of education is prostituted to exclusive, agressive national interests, division, confusion, and strife enter. "Art, science, and commerce are international both in quality and method. But with national sovereignty regarded as the basic conception and motive of government each nation lives in a state of hostility and incipient or actual war with its neighbors." The antitheses of educational aims, of subject matter and methods; the problems of 'interest and discipline,' of 'efficiency and culture,' of 'labor and leisure,' of 'naturalism and humanism,' are all shown, with convincing detail, to be symptoms of social cleavage. To the same source are traced the issues of philosophy. The problems of 'mind and matter,' of 'body and soul,' of 'the world and the individual,' of 'knowledge and practise,' of 'truth and goodness,' —all these 'record the main lineaments and difficulties of contemporary social practice.'

Within the present generation we have seen departments and schools of education grow shy of the 'philosophy of education.' There are schools of education that even boast the absence from the curriculum of any such thing as 'the philosophy of education.' The reason is not far to seek. When 'the philosophy of education' consists, as it so often does, of the antinomies of transcendental metaphysics, translated into educational terms, thus tending to fix in education the very disjunctions it should heal, or when it consists, on the other hand, of a collection of theorems and rules—a sort of pedagogical Euclid, little wonder departments of education feel they can get on without it. But if the conception of 'the philosophy of education' be one in which 'the most penetrating definition' of the philosophy in it is that it is

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'the theory of education in its most general phases' and one in which the theory of education is conceived as an account of the actual operations whereby human society is perpetuated in the world then no department or school of education which pretends to touch bottom can ignore it. The attempt to do so is quite analogous to the attempt of a well known school of philosophy to construct a new logic which excludes the act of knowing, because, forsooth, the act of knowing has been regarded in the past as 'subjective' and has kept logic in the throes of epistemology. As logic has been in need of a different conception of the act of knowing, so the philosophy of education has been in need of a new conception of philosophy. This need "Democracy and Education" supplies. The sub-title of this volume might well be "The Restoration of the Philosophy of Education"—its restoration—not only to students of departments and schools of education—but to all who have any interest in the problems of our common life and in the future of democracy in our world.

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THE UNITY OF WESTERN CIVILIZATION. Essays arranged and edited by F. S. Marvin (Author of 'The Living Past'). Oxford University Press, 1915. Pp. 315.

A brave, large-minded book has been published under this title. The title itself is a *beau geste*, calling us to hope and to sympathize, reminding us, in the closing words of a fine essay, that the great forces which make for unity "will reappear after the storm has passed and rebuild the wreck" (p. 312). Though the different writers agree in thinking that "our country's cause and the cause of our Allies is just," there is not one bitter word about Germany from beginning to end. "To curb aggressive nationalism," it is well said, "is the root-problem of the present war. To reconcile permanently nationalism with humanity would be to establish the everlasting peace" (p. 20). And "No peace can . . . be permanent which contemplates the excommunication of a leading member of the human family" (p. 305). The last sentence like many in this book, supplies a much-needed corrective to those (in every country) who think their only task is "to curb the aggressive nationalism" of all countries except their own. The writers will not despair. *Wir heissen*

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euch hoffen. " 'Idle dreams,' it will be said, as we hurl more and more millions of our best youth to destruction by the most highly-developed resources of science. Yes, but the same nations were only yesterday celebrating the services of Pasteur, Virchow, and Lister to a common humanity, and will do so again to-morrow or the day after" (pp. 311–12).

Definiteness is given to the book by detailed and historic studies. Professor Myers, dealing specially with war before the dawn of history proper, lays stress on the factor of a common 'culture' as making for unity alongside of the mere 'morphological' factor of a common 'race' (p. 37). The importance of 'race' in this respect he is inclined to minimise, while he finds "the first glimpse of a coherent European culture" "on the almost animal plane" of a common method for raising food (p. 54). "The régime" he says "which has made the Western World what it is has been generically a Bread culture; based on that combination of pastoral and agricultural life in which large cattle co-operate with man." This is interesting, and certainly it is worth noting, first, that without some such régime it is difficult to conceive of man as rising out of savagery at all; secondly, that a common way of life, apart from everything else, does unify to a certain degree. The discovery of steam has, we may admit, changed the world, and given men of one generation a sort of unity with each other different from the unity between themselves and the Elizabethans. But how profound is the change? And how deep that sort of unity? Does not Japan remain profoundly different from us, even though Japan has adopted steam?

Professor J. H. Smith states the contribution of the Greeks "as the idea and fact of civilization regarded as a process in and to freedom under the control of knowledge or reason." This was shown specially in art, in science, and in philosophy, and the mere idea of such a union, of man's mind as "interested in knowledge for its own sake and in itself as the power of the world" led the Greeks to the permanent ideal of "a life worth living," a life of intense activity, of unfailing interest, of living and inexhaustible value" (pp. 80, 82, 88). It is this ideal which must still inspire the world, the star of progress, but a star for all of us not for a few only as it was too often with the Greeks.

Ernest Barker sets out with much sympathy the great mediæval conception of "a Christian commonwealth" including all Christians and transcending the national State. To read his

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essay is to feel more than ever that what is fundamental in that conception must somehow be regained, and will modify profoundly our yesterday's view of the State. We have been too much inclined, those of us who thought about the state at all, to speak of it as sovereign *sans phrase:* it may be sovereign as against the selfish individual: it cannot be sovereign as against humanity or against the individual when he stands for humanity. The need of some organization to make a place in which that spirit of humanity can work comes out once more in Professor Geldart's essay on law. "International law," he writes, "in its modern form dates first from the time when states were waking up to the consciousness of sovereignty, and when the horrors of the wars which followed the Reformation showed that even sovereign powers ought to conform to some rules of conduct. . . . Unlike the law between man and man which modern states enforce by organized compulsion, there is no standing organization whose business it is to see that it is kept. . . . But a law which is defied with success and impunity is no law" (pp. 135–6). J. A. Hobson boldly tackles the problem of creating such an organization, saying boldly, and truly, "Sovereignty and independence like all other legal claims, are subject to modification and compromise. Every bargain made by treaty—every acceptance of international law—involves some real diminution of sovereign independence, unless indeed the liberty to break all treaties and to violate all laws is expressly reserved as an inalienable right of nations" (p. 267). Constance Smith gives an inspiring account of what has actually been done in the International Bureau for Industrial Legislation: how German and English and French supporters (notedly Mr. Millerand, the present Minister of War) worked together in real harmony and how much solid work was accomplished. Other writers deal with those vast forces that cannot be crammed into a political system: the broad common movements in literature and art, roughly contemporaneous throughout the greater part of Europe in both mediæval and modern times, as shown for instance by mediæval epic and mediæval romance, the rise of drama, classicism, modern romanticism and realism (A. J. Carlyle); the common movement of sciences and philosophy, which sprang from the common Græco-Roman inheritance and the common spirit of Christendom, and have depended incessantly for their power on inter-communication, particularly between German, French,

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and English thinkers (Professor Hobhouse); the broad likenesses in European education throughout the changes of its history from the old scholastic to the humanistic and later to the scientific ideal (J. W. Headlam); the almost universal desire for social reform, the modern social conscience everywhere ill at ease and seeking to put the dispossessed into possession (C. Delisle Burns); the common interests of finance, trade, and exchange, and the conflicts that arise over such exchange (Hartley Withers). The last-named writer has a happy gift for describing an economic situation with great fairness, terseness, and simplicity. "The individuals become mutually dependent and live by one another's production. Hence comes unity," he says, describing the division of labor and the growth of trade, but then he adds, "and with it a fresh cause of dissension owing to the likelihood of quarrelling over the exchange effected." A balanced statement singularly appropriate to our present distressful condition. Mr. Wood, at the other end of man's scale of values, deals with religion. He does not minimise the conflict of creeds but he emphasizes, and in an inspiring fashion, the sense of unity shown by the Western belief in the solidarity of mankind and in the progress towards a common end. "Toleration" he holds to be "an essential element of the Christian character" and a "deep respect for individuality . . . to be at the centre of the gospel." Because in every individual there is believed to be a divine element leading to truth.

It is obvious that the book is packed with matter. All the essays are valuable, and some of them, beside being pregnant in themselves are singularly well-suited for an introduction to the subject.

F. M. Stawell.

London.

The Political Writings of Jean Jacques Rousseau. Edited from the original manuscripts, with Introduction and Notes, by C. E. Vaughan, M.A., Litt.D. 2 vols. Cambridge: University Press, 1915. £3 3s. 0d. Vol. I., pp. xxii, 516; vol. II., pp. iv, 577.

A complete and scholarly edition of Rousseau's political writings is of good omen. Nothing could better supply the peculiar needs of the present. We are indebted to Dr. Vaughan

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for work which is both useful at the moment and will undoubt-doubtedly prove of permanent importance.

He has given us the full and carefully corrected texts of Rousseau's political treatises together with illustrative passages from the *Emile*. A review is added of the state of the manuscripts, all of which Dr. Vaughan has collated at least twice. The true extent of the labour involved can hardly be measured by the careful corrections and the interesting notes on textual exactness of which the edition is full. We feel that we have the real Rousseau, both in the two renderings of the *Contrat Social*, in the political letters and in those most inspiring fragments *L'État de guerre*, and the *Jugement sur la paix perpétuelle*. And the real Rousseau for us now means something very valuable, if we consider that we, too, may be living on the eve of a social revolution. Prophecy is futile; but even if nothing new comes out of the present political confusion, much new thinking will have to be done. Rousseau stands for a freshness of outlook which is not gained by a too easy repudiation of the work of past thinkers: and a very clear sense of his modernity must have originally urged Dr. Vaughan to give us the whole of Rousseau's political teaching. His educational theory is the most difficult part of his work to omit when one is considering his political writings; but in the end we have to acknowledge Rousseau's greatness even in the most restricted sense of the theory of political society.

In addition to Rousseau's work we have, in this edition, Dr. Vaughan's own comments. To begin at the end,—Dr. Vaughan in his second appendix to the second volume has given us a paper, based upon Mrs. MacDonald's work, which deals with Rousseau as a man. His character is admirably and, to my mind convincingly rendered. Clearly the idea of a "conversion" explains much in Rousseau; and the calumnies from which Rousseau's reputation has suffered are completely exposed. This perhaps corrects the limitation of the older view of Rousseau's moral character which even Lord Morley accepted.

But naturally what is newest and most interesting in these volumes is the general view which Dr. Vaughan takes of Rousseau's political theory. The discussion of Rousseau's political thought turns on an old contrast between individualism and collectivism. Dr. Vaughan makes him the exponent of an extreme collectivism. It is recognised that the suppositions with

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which he had to begin his work were individualistic in the eighteenth century sense. The *Discours* is mainly a protest against evil, based on a mistaken and abstract theory of the individual divorced from any community; and as a social protest, it did not express any clear or new political idea. When we come to the body of the *Contrat Social* the guiding conceptions as well as the general argument are collectivist. The individual is "annihilated": he is totally "surrendered"; and his separate personality is replaced by the "collective self" of the community as a whole. This involves state-absolutism, although the state is to Rousseau the people and not the king. Dr. Vaughan says that Rousseau was willing to go to that extreme. He was impressed, no doubt, by the immense debt the individual owes to his group, by the obvious fact that the individual of eighteenth century theory did not exist, and most of all by the need of some strong power to overthrow the established personal despotisms of Europe. The "general will" appears as sovereign. There are, however, corrections in Rousseau which Dr. Vaughan sees in the emphasis put upon the free and reasonable individual as the source of political power. In spite of the ideal of unity and strength, Rousseau never lost his conception of liberty. And when we turn from Dr. Vaughan's Introduction, written before the war, to his Epilogue, written after war had begun, we incline to smile. Rousseau is still collectivist: but violently contrasted with such an absolutist as Fichte. We read (vol. II, p. 522) that "with all his austerity the individualist in Rousseau was never wholly exorcised by the collectivist." I do not quite see why an individualist should be regarded as a demon: and I incline to dispute the validity of Dr. Vaughan's idea as to where the emphasis really lies in Rousseau's political theory. But I confess that so long as we speak of an eternal conflict between the "moi-humain" and the "moi-commun," between the individual and the "corporate self," it does not very much matter which is exorcist and which demon.

In the other great issue dealt with by Rousseau, that of the relation between states, Dr. Vaughan admirably estimates the excellence of Rousseau's practical suggestions without being blind to his limitations. Some of these were, of course, inherited. But perhaps Dr. Vaughan does not sufficiently emphasise what appears to be a very great limitation still existing in all such discussions. I presume that the relation between states, even more

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than the relation of citizens to their state, will be the subject most debated in the near future. In Rousseau's time, also, war gave much food for thought. Rousseau calls war and tyranny the two greatest scourges of mankind. But how is war to be avoided? The plan of a confederation is undoubtedly good. But Rousseau hardly saw—and Dr. Vaughan does not point out this fact—that it was not mainly a question of political machinery. The danger of writing upon the state is that the writer begins to think that what is not the state is nothing. Rousseau's ideas hardly go beyond a state arrangement. And no suggestion as to the future is even now likely to be effective if the problem is dealt with as though it concerned only the limitations of sovereignty. Rousseau too much identified human society with political institutions. But for all his deficiencies and in spite of the omissions which Dr. Vaughan was perhaps obliged to allow in his excellent commentary, these two volumes are full of suggestion for our present needs. The ultimate issue for theory is, no doubt, what Dr. Vaughan makes it. How are we to consider the relationships of men in society? Are we to be individualists or collectivists? And is the theory of collectivism what we chiefly owe to Rousseau? This is not the place to discuss in detail either Rousseau's position or that obviously adopted by Dr. Vaughan. It is sufficient to say that one may possibly put aside altogether the old controversy in acknowledging our greatest debt to Jean Jacques. I admit that Dr. Vaughan is entirely right in saying that Rousseau's great contribution was the social idea. Indeed I should have said that he is known as a collectivist and not as an individualist. I do not know about the English interpretations. But Taine makes it his complaint that Rousseau only transferred the obsolete sanctity of despotic government to democratic government. Renan and, in our own day, Émile Faguet make the same sort of judgment. But Dr. Vaughan does not deal with the recent French criticism of Rousseau. The fundamental point for me is that Rousseau is too great to be either collectivist or individualist. Happily he had scientific exactness without losing artistic perception. So long as one contrasts the two "isms," one has the uncomfortable feeling that our disputes about the state will sound to our grandchildren like the mediæval disputes concerning the intelligence of angels. To be vastly moved as to whether the state should aim chiefly at "self-preservation" involves a blindness to the unmystical fact that it

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is you and I who are called upon to defend it. If it could defend itself or indeed if it had any self to defend, the state might be absolute for all I know. If angels think, they may very well think as Aquinas will have it that they do. What really we want to know is how we "unfeathered bipeds with gregarious habits," as Plato has excellently called us, may best arrange our lives so as to get more out of them than we do or than our fathers did. The established arrangements have been named, by some Adam who was present at creation, state and church and the rest; but he had not a good eye, and he took animals for angels and gatherings for disembodied intelligences. Even our modern scientists leave one unconvinced. I cannot reduce the state to pounds, shillings and pence. I can only see men, women and children. This sense for reality, as it appears to me, I find in Rousseau. This and not any theory of limited individualism or moderate collectivism makes him valuable in an age in which institutions have become so vast that man himself loses his humanity. What we need, and what I think Dr. Vaughan sees that we need, is not chiefly security for the state or freedom for the citizen, not collectivism or individualism, but political humanism: and the father of that is Jean Jacques, who himself owed it to the greatest of our ancestors, Plato.

C. Delisle Burns.

London, England.

The Inequality of Human Races. By Arthur de Gobineau. Translated by Adrian Collins, M.A., with an introduction by Dr. Oscar Levy. London: Heinemann, 1915. Pp. ix, 220.

The translation of Count de Gobineau's famous work, especially in such a competent and charming version as this, is a not inopportune event. For in its decisive simplicity and vigour, it stands for one answer to the question which no one can avoid asking just at present,—What is the meaning of this breakdown in civilization? Gobineau's answer is that it has no meaning at all, none at least if by 'meaning' we imply any kind of value. There is meaning enough in it as a natural fact, as one incident in that conflict of races which is the whole history of civilization. But no moral or political or religious principle is at stake, here or anywhere. There is one inexorable law governing this conflict and governing every movement in human history—that

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the best race must triumph, and that the best race is the race of purest blood. Neither speech nor art, morals nor religion, climate nor economic condition can affect, except superficially, the destiny of peoples. If we are of pure blood, the world is ours. If we are not, then presumably it were well that we should know it, and withdraw from the stage where we can no longer bear our part with honour.

At this late day in the chequered story of the world, we may wonder what purity of blood means. But Gobineau's answer is clear enough. So far as human research can carry us, we cannot go behind an ultimate division of mankind into three races,—the black, the yellow, and the white. This is the order of their capacity, actual and potential. Each is capable of development up to a certain point, none beyond the point which an implacable nature has fixed for the type. Hence all dreams of human perfectibility, and of the ultimate equality of races are mere chimeras. From the white race, and from it alone, springs "everything great and noble and fruitful in the works of man on this Earth, in science, art, and civilization." But even within the white race, there are striking, though fluctuating inequalities. Somehow in the course of early human civilization, one people emerges from its neighbors as the repository of the creative impulse of the race. In virtue of that impulse, it must seek to expand itself, either in war or by the arts of peace and to bring other peoples within its influence. The price of success in this is a mixture of its blood with that of the inferior race; and the older and more widespread its civilization becomes the more complete the "degeneration." That civilization is doomed. Somewhere in the world, the accident of breeding has thrown up a more virile stock: and its destiny is to attack and defeat the degenerate. It is bound to prevail, until its purity of blood is corrupted, when it in turn must give way to another. "I can say positively" writes Gobineau, "that a people will never die if it remains eternally composed of the same elements. . . . A State may be overthorwn, but not a civilization or a social organism."

Now, a thesis of this kind, provided it contains something of truth, is always capable of proof. For whatever other factors one may suggest as contributing to the rise and fall of civilizations, they can be said to be the outcome of the purity or degeneration of the blood. And if the author of a theory is resolute enough

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in taking this point of view, and in regarding each one of the complex conditions of the health of a civilization as simply another form of what he takes to be the fundamental condition, the success of his proof is only a question of his ingenuity in covering up the tracks of a logical fallacy. A *sine quâ non* is seldom the sole determining factor: but where the field of choice ranges from China to Peru—both countries are much in Gobineau's mind—and from Adam to the nineteenth century A.D., the acute mind can be sure of ample material on which to appear to apply the method of difference. Gobineau is acute, though inaccurate in the second of these respects, and for the most part, gloriously indifferent to the first. His work is brilliant, learned, and often bewilderingly inconsequent. If anyone doubts the justice of this last opinion, let him study say pp. 174–5, and ask himself what is proved, and what is shelved.

This is not to say that Gobineau's work is not valuable or that his point of view matters little. It only means—perhaps it is our spiritual pride—that by the wickedest kind of paradox we have progressed far enough beyond Gobineau to see that his doctrine of the illusoriness of progress does not settle all our doubts. Of course, what he was chiefly concerned to prove,—the reality of innate differences in individuals and in peoples,—has largely passed into the common stock of our political ideals and perhaps his relentless pessimism was good for the Europe of the '50's and '60's. But the world of the early twentieth century cannot hope to see things quite so simply, or to find in this plain tale of its inevitable destiny, a direct cut through its sad and acknowledged "confusion of moral values."

H. J. W. Hetherington.

University College, Cardiff.

History of Mediæval Political Theory in the West. By R. W. Carlyle, K.C.S.I., C.I.E. and A. J. Carlyle, M.A., D.Litt. Vol. III, Political Theory from the Tenth Century to the Thirteenth. By A. J. Carlyle. Pp. xvii, 201. London and Edinburgh: William Blackwood and Sons. 1915.

This volume marks the third stage in the progress of the large task which the authors have undertaken—to write the history of the political theory of mediæval Western Europe. Like the first two volumes, it is the work of Dr. A. J. Carlyle; and like

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them also, it is an admirable achievement. So far as can be judged from the first installments, there is no doubt that the completion of the series will enrich English political philosophy in a substantial and important history, worthy of Oxford scholarship.

The present part begins with a brief resumé of the conclusions of the earlier books, explaining the inheritance of the middle ages from antiquity and the influence of mediæval Roman and Canon law. The discussion of its proper subject falls into two parts—the examination of the principles of feudalism from the tenth to the thirteenth centuries, and a consideration of the prevailing political conceptions in the general literature of the eleventh and twelfth centuries. Dr. Carlyle finds that the principles of political organization were "substantially the same in all the European communities." Hence his studies cover all the then existing political groups in the West. And this important conclusion is reinforced by the remarkable unity of the ideas which are to be found both in feudal institutions and law, and in the literature of that period.

Feudalism, we are apt to suppose, was a system of purely personal relationships. But that view, Dr. Carlyle points out, is due to the literary rather than to the legal or historical tradition; and within the literary evidence, there has been a common failure to distinguish between the realistic epic and the conventional romance of the twelfth and thirteenth centuries. The truth is that alongside the personal relationship of lord and vassal, there was both in theory and in practice the recognition that the loyalty of the vassal depended on the fulfilment of certain obligations by the lord. The relationship, though profoundly personal, was also definitely contractual; and the contract could be enforced by a well regulated machinery of courts, or by an appeal to the overlord. Every grade of the feudal world, indeed, was subject to law, which originates not in the will of a king but in "the custom and consent" of the community, and which grows with its growth.

And this recognition is historically important because it is at least part of the explanation why feudalism did not result in the disruption of Europe into a very large number of small communities. Its natural tendency, of course, was in this direction: but it was checked by the operation of those larger principles which brought the feudal groups under the control of the national systems.

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It is possible to discover the same governing principles in the general mediæval view of the state. Dr. Carlyle reduces them to three. First, the purpose of the state is moral,—"the maintenance of justice and righteousness." It may, indeed, have "originated in sin" but that means simply that it was a divinely appointed instrument for the restraint and removal of human wrong-doing. It was, therefore, the creation of God: and its ruler was God's vicar by divine right, but only when and in so far as he carried out God's purpose of justice. Hence secondly, the law of the state, the embodiment of justice, was the supreme principle of its constitution.

> "Decet regem discere legem,
> Audiat rex quod præcipit lex,
> Legem servare, hoc est regnare."

And finally, consequent on these two, the relation between king and subjects depended on the mutual obligation to maintain justice and law.

This is the barest summary of the conclusions which Dr. Carlyle backs by a wealth of learning in the jurists and lawyers of these centuries. But it will serve to show how systematic his treatment is, and how vital the thought with which he deals. It is not the least of the merits of this book that it decisively saves us from thinking of the Middle Ages as a kind of death in life. It was rather a period when high intelligence tried to formulate and to apply great political principles to a most complex and changing social world.

H. J. W. Hetherington.

University College, Cardiff.

An Introduction to Ethics. By G. A. Johnston, M.A. Macmillan & Co., 1915. Pp. x, 254.

This small book consists of Mr. Johnston's lectures to students in training at Glasgow. Among the many odd subjects which the government requires teachers to have heard about, ethics is included. It is rarely that these unfortunate beings get really good lectures from a really good lecturer such as those who listened to Mr. Johnston's course have enjoyed.

The book seems to me to be an admirable introduction to ethics. Mr. Johnston has, from the nature of his audience,

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often had to try and bring his ethical doctrines into close connection with teaching. This is doubtless a necessary evil, but it is so far an evil that it has led to some rather startling remarks which the lecturer would probably have omitted or altered had circumstances been different: *e.g.*, on p. 39, teachers are advised to recommend children "to choose the best of their companions as friends." If the children acted on this suggestion (of which, happily, there is very little fear) we should have the spectacle of the bad children trying to make friends with the good ones and the good ones sternly repelling their advances. Again, on p. 152, at the end of an excellent chapter on the Sanctions of Conduct, Mr. Johnston informs the teachers that "it is impossible to give any *particular* reasons for being good that will be absolutely true, not because there are no reasons for being good, but because there is every possible reason." This is a fine epigram; but I am afraid that, like most epigrams, it will not stand criticism. If there is *every* reason for being good, why should no particular reason be absolutely true? If I can prove a proposition in six different ways this surely does not make all my six proofs only partially valid. And surely the fact is that there are dozens of reasons for not being good, but no reason for it except—that it is good to be good.

Mr. Johnston first asks what is the good for man and answers that it is "the development of a strong character in the activities of a socially valuable position in the community." As a definition this appears to me to be circular; for I suppose that a position in the community is only socially valuable if it makes for the good of man. But it forms an excellent peg on which to hang the very useful discussions of the rest of the book. Part I is largely psychological. It traces the development of character under the influence of heredity and environment, including in the latter definite moral teaching. Impulses are developed into desires, and emotions are organized to sentiments; finally the whole must be unified into a formed character. The self is treated in its two aspects, as conscience which judges about good and bad and as will which acts according to these judgments.

Mr. Johnston makes some excellent remarks on the conclusions which eugenists have drawn from the Edwards and the Jukes families, pointing out that the environment of Edwardses has generally been favorable and that of Jukeses unfavorable. I

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am less convinced by his remarks on p. 27 that we are all born with unlimited capacities for good or evil, though with strictly limited ones for doing mathematics. I should have thought that many people were as incapable of the highest degrees of goodness or badness as of doing higher mathematics.

Mr. Johnston is anxious to prove that in spite of heredity and environment we are responsible for our actions. I agree with his conclusions, but do not quite see the force of some of his arguments. One argument (p. 31) is that heredity and environment are not mutually exclusive. This seems to me quite irrelevant to the question of responsibility. Another argument is that we react to environment in our own peculiar way, and that we make our own character by acts of will. But might it not be that my first act of will is entirely due to heredity and environment (mainly heredity)? If so, the fact that this first act is a joint cause with heredity and environment of my next act of will, and so on, does not alter the fact that the ultimate causes of my character are heredity and environment. My own feeling is that these causal questions are irrelevant to the ethical one of my moral responsibility; however I may have been caused it is true that I am the sort of being who is responsible for his voluntary acts. And this is none the less true if other persons, *e.g.*, God, my parents, and society, are *also* responsible for my acts as partial causes of them.

I have one criticism to make on Mr. Johnston's Chapter IV about Impulse and Desire. On p. 65 I do not think that it is made quite clear in what sense desires always have a reference to the self. The point, I take it, is that as a matter of psychology all desires have a reference to the desiring self, and that as a matter of ethics all desirable objects get their desirability from their reference to *some* self. But it seems to me that the nature of the psychological reference might have been made clearer in view of the great plausibility of psychological hedonism, and that it should be made quite clear that the self which makes a desired object desirable need not be the self that desires it.

In Chapter VII on Will and Conscience I should like to draw attention to Mr. Johnston's excellent remark that "Conscience is indeed simply consciousness dealing with moral life."

In Chapter IX we have a valuable discussion on the standard of moral judgment which Mr. Johnston takes to be Reason, used in no mystical sense but simply as intellect dealing with a

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special subject matter. And we may commend to many readers his remarks on the opinion that Mr. Ramsey MacDonald and his friends are to be blamed for trying to do what Dr. Liebknecht and his friends are to be praised for trying to do.

Chapter X describes the Motive and Sanctions of Conduct. Mr. Johnston takes the balanced view that the rightness of an action depends on the goodness of its motive, taken in the sense of the feeling that prompts it, plus the foreseen consequences. This seems plausible enough, but we need some means for deciding what weight is to be given to each factor in the complex. Here Mr. Johnston does not seem to me to be clear. *E.g.*, a foreseen punishment is part of my motive in his sense, but he will not allow that an action based on this alone can be good. It is surely not sufficient to say that the punishment is external to the act; for it may be attached by ordinary laws of causation in a society with as much certainty as physical consequences are attached by natural laws.

I have only one more criticism to make. Why are we told in Chapter XI that consciousness of moral obligation is only possible to a self that is aware of its own imperfection and also of an ideal perfection to which it has not yet attained? A self that has always acted rightly but which is in time and has to do new acts continually might surely be morally perfect and yet have a sense of moral obligation at each new decision.

The book concludes with chapters on the place of Pleasure, on Vocation, on the Virtues, and on the Institutions of the Moral Life. It may safely be recommended to all students beginning ethics, and to many who have long passed that stage.

C. D. Broad.

St. Andrews University, Scotland.

Genetic Theory of Reality, Being the Outcome of Genetic Logic as Issuing in the Aesthetic Theory of Reality called Pancalism. By James Mark Baldwin. New York and London: G. P. Putnam's Sons, 1915.

Professor Baldwin's work on *Thought and Things, or Genetic Logic* was to have been completed in a projected fourth volume. Owing to considerations, however, partly of an external character, the author has been led to publish as a separate work the discussions which draw the general philosophical conclusions

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from his previous studies. The present volume, then, is made to such degree independent of other writings, in point of literary form, that he even considers it adapted to serve as a general introduction to philosophy; while at the same time its logical grounds have been systematically fortified by the results of the earlier work.

The philosophical standpoint of Pancalism (τὸ πᾶν καλὸν) is perhaps not quite so novel as the name. It finds in the æsthetic synthesis the key to the meaning of experience and of reality. The author recognizes as his intellectual predecessors in this matter especially Aristotle, Kant, and Schelling. The particular Kant in reference is the author of the *Critique of Judgment*, which Professor Baldwin rates very highly. Schelling is judged to have brought out the essential need of synthesis between the activities of knowledge and practice, and to have discerned correctly that the positive mode of consciousness in which the reconciliation occurs is that underlying art. But the solution offered by Schelling, while pointed in the right direction, is too speculative and also too rhapsodical to be convincing. Professor Baldwin feels that the present philosophical requirement is to face Schelling's problem, but with a more adequate analysis of the art consciousness and its products. Pancalism, then, is the conviction that we realize the real in achieving and enjoying the beautiful, and nothing can be in any high sense good without being beautiful. Indeed, whatever is really good or true is such just because it is beautiful. But the æstheticism here supported is not the formless and unsystematic appeal to mere individual mood, which Eucken has characterized as æsthetic individualism. On the other hand, the æsthetic synthesis is conceived as holding in solution the values developed by science, ethics, and religion, without weakening or annulling them. Sidney Lanier had already said to the students of Johns Hopkins, "He who has not come to that stage of quiet and eternal frenzy in which the beauty of holiness and the holiness of beauty mean one thing, burn as one fire, shine as one light within him, he is not yet the great artist." If Baldwin, in striving to "consolidate" the position thus brilliantly carried, has placed the emphasis more strongly upon the holiness of beauty, it is with no purpose, as I understand him, of sanctioning a maudlin treatment of other values.

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The book is a good one. It is not only interesting, but, I think, largely sound in point of philosophical judgment. True, it is rather too broad in its survey to be very profound. Further, while much of its freshness comes from the novel viewpoints and classifications employed, yet many of the contrasts with conventional treatment which thus arise seem largely verbal.

For instance, the author maintains an attack upon intellectualism; but the intellectualism under discussion has little to do with Plato or Hegel. It may be materialism in metaphysics, or sensationalism in epistemology. In all its forms, intellectualism is supposed to emphasize facts, data, grounds, the Gradgrind point of view; and to make no provision for values or ideals. This would ignore the entire Platonic doctrine of knowledge as idealization, and Hegel's emphasis upon the higher immediacy which stands above the merely relational viewpoint. These teachings the author means to endorse in principle, but he simply does not classify them under intellectualism. On the other hand, "all the systems of idealism," including that of Plato, appear with him as forms of voluntarism.

Professor Baldwin's critique of the value of knowledge is strong in its negative dialectic, but more conservative than that of Bergson. "We do not find here justification for the alogism which charges knowledge with rendering only a conceptual distortion of the real, and finds in mediation through ideas only a means of banishing the actual and concrete. On the other hand, the end of knowledge is to restore the actual, to bring the imaginary within the range of concrete control. . . . It makes an essential report on the nature of things (p. 163)."

A somewhat similar vindication is given of the religious valuation of life. Religion, in Baldwin's view, is an outgrowth of the social nature of man; but its point is to consecrate the ideal of the humanity that is to be. He resists, then, the positivistic conception of a religion of humanity, whether purveyed by Comte or Durkheim; and supports in place of it the religion of ideal humanity, that is, of divinity. Religion, then, he conceives as an abiding element in human nature, because its values are rooted in reality.

But both the scientific viewpoint and the religious viewpoint are relative to a larger and more inclusive viewpoint, that of æsthetic appreciation. Throughout the concluding chapters, in which the attempt is made to demonstrate the all-inclusive

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and self contained character of the æsthetic experience, the familiar motives of absolute idealism are regularly in evidence. The result, of course, is quite different from the Hegelian type of absolutism. Some of the differences seem to be chiefly verbal, but others clearly imply different estimates of philosophical values. It is evident, however, that the kinship with other absolutist systems is more significant than the relation to pragmatism, Bergsonism, or other recent tendencies. An added interest of this book arises from the close connection which Professor Baldwin always maintains with biological, psychological, and sociological discussions.

E. L. HINMAN.

University of Nebraska.

ANIMAL RIGHTS, Considered in Relation to Social Progress. By Henry S. Salt. Revised Edition. London: G. Bell & Sons, Ltd., 1915. Pp. vii, 124.

Those interested in Humanitarianism will be pleased to see a new edition of this vigorous and temperate statement of its case. The new edition is not greatly altered from the first, but contains some replies to criticisms—notably those that were published in this JOURNAL by the late Professor Ritchie. The real point on which controversy turns seems to relate to Mr. Salt's assumption, that the modern doctrine of evolution involves the denial of any fundamental distinctions between different levels of life. He does not appear to have taken much account of recent discussions on this subject. M. Bergson, among others, has done much to overturn the assumption on which he proceeds; and many of those who do not follow M. Bergson in other respects, recognise the value of his work on this particular problem. Professor Lloyd Morgan also has emphasized the essential difference between animal intelligence and reason. Such researches ought not to be ignored by writers who deal with the bearing of evolution on the doctrine of animal rights. It seems clear that, if Mr. Salt's view is to be pressed to its logical conclusion, we ought to speak of the rights of nettles, sponges and oysters, as well as dogs and horses. It may be admitted that, the nearer we get to human life, it becomes more and more difficult to deny rights; just as it becomes more and more difficult to deny obligations. From some domestic animals we exact what may

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almost be described as duties; and, if we recognise duties, we can hardly exclude rights. But it may be questioned whether it is quite true that we are entitled to regard the services of animals as obligations. On the whole, it would probably be wiser for humanitarians to avoid this controversial field. Would it not be sufficient for their purpose to contend (what would be generally admitted) that pain is an evil, and that it is consequently wrong to inflict unnecessary pain? No doubt the question would still remain, in what circumstances the infliction of pain can be held to be necessary. How far it is right to practise vivisection or to use animals for food, would continue to be controversial questions. But they are controversial in any case, since, as Mr. Salt admits, rights are always subject to qualification. If rights were treated as absolute, and all living beings were supposed to have rights, it would seem to be doubtful whether we are even entitled to eat cabbages or to prune roses.

J. S. MACKENZIE.

London.

TOWARDS A LASTING SETTLEMENT. By various writers. Edited by Charles Roden Buxton. London: George Allen & Unwin, 1915. Pp. 216. 2s. 6d. net.

The essays composing this brave and significant book can only be considered separately as 'each contributor is responsible only for the opinions which he or she expresses.' Two contributions out of the nine, stand far above the rest in positive originality and vision: 'The Organization of Peace,' in which Mr. H. A. Brailsford offers a definite constructive scheme of international arbitration or conciliation, with clear-sighted moderation of statement; and 'The Democratic Principle and International Relations,' by Vernon Lee (Violet Paget) who outlines a whole philosophy of individual self-determination and civic and international co-operation with a fastidious and deliberate finish of diction. She gives a strikingly happy definition of the democratic attitude as 'one of greater and greater respect for freedom of choice, and greater and greater belief in the tendency of variety to produce by mutual selection and adjustment, an ever richer and more supple social harmony', and there is an admirable summary of the history of antiquity as 'a series of wreckages' of 'those ancient civilizations, submerged one after another with

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such colossal waste of acquisitions and possibilities.' Miss Paget has here done a valuable and distinguished piece of work.

The case for 'Democracy and Publicity in Foreign Affairs' might have been more effectively stated by Mr. Philip Snowden, M. P. He scores in mentioning the eagerness of the Unionist party to submit the question of tariff reform to a referendum of electors who are considered unfit to decide most points of foreign policy; but the whole article is below his usual level as debater or writer.

Mr. J. A. Hobson, in 'The Open Door,' points out that there is "a certain unreality or inadequacy in the stress laid upon 'nationality' or 'political autonomy' as the basis of a satisfactory settlement" and suggests that "If the governments of all civilized nations would consent to give equal rights of commerce and equal facilities of investment and developmental work in their colonies and protectorates to members of all nations" this would be the surest guarantee for peace. He admits the strength of the movement to jettison Free Trade (along with the Habeas Corpus Act, and Free Speech) but thinks the minimum of the Open Door policy defined above might be secured and elaborated. There is an excellent sketch by H. Sidebotham, of the history and theory of 'The Freedom of the Seas,' which should make the British and American positions mutually more intelligible; it is a model of terseness and impartiality and clearly demonstrates that, as against Germany, England is fully justified in maintaining the full vigour of "navalism," but that "the ideal of 'the Freedom of the Seas' is too fine to leave in the hands of the Germans."

Mr. Charles Roden Buxton is the only contributor who gives any distinct impress to the complex racial problems of Eastern Europe. The wide and detailed special knowledge and generous idealism of his essay on 'Nationality' should suggest to the British democracy 'what a treasured house of civilization is revealed to us in the national life of our fellow peoples'; and he reminds readers that subject nationalities include not only Finns and Poles, but also Slovaks, Ruthenes, and Serbo-Croats.

Mr. G. Lowes Dickinson analyses the militaristic-fatalist theory of history, and the 'habit of conceiving one's State as independent of legal moral and cultural obligations to other States' and concludes that' 'there is only one force that works for peace: that human reason which is also human charity.'

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The book will be intensely resented in some quarters. In face of the temper bred in Germany by the last forty years and the present war, and in other nations largely by the impact of German aggression, its main aims may be thwarted for at least a generation.

F. W. STELLA BROWNE.

London, England.

SHORTER NOTICES.

MORAL EDUCATION, AN EXPERIMENTAL INVESTIGATION. By William T. Whitney, Pd.D., Ph.D. Boston: Leroy Phillips, 1915. Pp. vii, 108.

The experimental investigation referred to in the title is a study of the home and school life of six hundred boys and six hundred girls in the elementary class. The object was to ascertain the correlation between (1) the religious training of the children and the deportment in school, (2) their home training as relates to the fundamental habits and attitudes used in estimating deportment, and their deportment in school and (3) deportment and scholarship. The results show a very strong positive correlation in the first two respects. The correlation between deportment and scholarship is also in general pronounced. Another investigation attempted to follow the careers of the boys and girls after leaving school in order to judge of their progress or failure in later life. Of the 151 who kept on through high school and entered college only seven were found to be unsuccessful. Of the 49 who graduated from high school who did not enter college only five are reported as non-successful. Of 321 entering high school 121 did not graduate. These have a more moderate wage yet only eight are classed as idlers or unsuccessful, although about 25 receive low wages as day laborers or grocers clerks. On the other hand of the 179 who left school between the sixth and eighth year of the grammar school course practically all had made little economic advance at the end of four years and were working as day laborers or grocers clerks or in clerical positions at low wages while 23 were "failures." Of course in interpreting such statistics there is always an ambiguity as to whether the boy succeeded because of his school or whether he completed his school because he was the kind of boy who would succeed, but the statistics so far as they go speak well for the work of the schools. Much blame has been given to public schools but very little evidence actually presented that they are responsible for the deficiencies in our public or private life. The author's chief contribution toward moral education in the schools is a demand for reconstruction of the recitation. The logic of his arguments if carried further would seem to lead not only to an improvement of the recitation but to the kind of school work explained by Dewey's "School and Society."

J. H. T.

UNDERCURRENTS IN AMERICAN POLITICS. By Arthur Twining Hadley. New Haven: Yale University Press. London: Humphrey Milford. Oxford University Press, 1915. Pp. xii, 185. $1.35 net.

President Hadley has the ability to single out from the complex economic political and social process the really significant factors and to present them in a way that never fails to catch the attention. The reader may

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have known most of the facts before but he is almost certain to find them taking on a new and sometimes a startling meaning as he reads them in President Hadley's presentation. The present volume contains two courses of lectures, one on Property and Democracy, given at Oxford University, the other on Political Methods, given at the University of Virginia. In the former the fundamental question is, why a nation which in many ways is so democratic, has seemed to be more concerned for the interests of the property owner than for the interests of humanity. It is pointed out that the country was not originally a democracy in the modern sense, and that while the land system favored the growth of democracy it also promoted industrial conservatism. The great need of capital in a growing country made men tolerant of its power. Labor leaders ignored and antagonized farmers. Competition for a long time was highly regarded but now when it is proving unsatisfactory in many ways the public service is not fitted to give efficient control. In other words we have a dilemma between efficiency conjoined with injustice if we accept private control with monopoly, and an attempted just management which does not secure its end because of its inexpertness. The most significant moral problem in the second series of lectures deals with the Seat of Power To-day. The newspaper is regarded as the most important factor in the shaping of public opinion, having taken the place of the older party organizations and of the orator. The advantages and dangers of the new situation are luminously set forth. If the lectures had been written since the war began the author might have found many apposite illustrations of the newspapers' effort to influence public opinion by their headlines.

J. H. T.

ABOVE THE BATTLE. By Romain Rolland. Translated by C. K. Ogden, M.A. London: George Allen & Unwin, 1916. Pp. 194.

Here are the essays and letters contributed by Romain Rolland to the *Journal de Genève*, in the interval of work for the repatriation of prisoners and refugees, from August 29th, 1914 to August 2d, 1915. The author adds a short preface, a couple of notes and acknowledgements to his champions in the *Parisian Socialist* and *Syndicalist Press*. With the essays and letters are incorporated three international documents of value: the manifesto of the Catalonian intellectuals, the Appeal of the Dutch Anti-War Council, and clear and vigorous testimony of a Lettish student, as to the respective perils of Pan-Germanism and Pan-Slavism.

Romain Rolland has not forfeited his intellectual honesty and self respect. 'War Literatures' and 'The Murder of the Élite' are terse and touching accounts of that small minority in Germany which did not succumb to the war fever, but could be just and generous even in the trenches. Side by side with these essays, are the tribute to Belgium, The Open Letter to Gerhart Hauptmann, and the Valedictory, 'Jaurès.' The knowledge is equally wide and sound, the style curiously epic in its massive dignity and limpid clearness, with some strikingly happy epigrammatic judgments.

F. W. S. B.

THE ETHICS OF CONFUCIUS. By Miles Menander Dawson. G. P. Putnam's Sons, $1.50.

A careful selection has helped to accomplish the author's aim "to put before Occidental readers, in the words of the Chinese sage and his followers, as translated, everything concerning ethics and statecraft con-

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tained in the Confucian classics which is likely to interest them, omitting nothing of importance."

But this is not all. This book is the more noteworthy because of its timely appearance. The West is facing to-day, problems which are the necessary consequences of its own economic conditions and its predominantly negative morality. Problems concerning marriage and divorce, education of children, caring for the poor, capital and labor, etc., are making push-balls of western moralists of to-day. And if the western student of ethics, for whose benefit this book is prepared, will read it with an open mind, a mind unbiased and free of the long settled conviction that the thought of the Occident is superior to that of the Orient, he will find to his surprise, many suggestions to the solutions, if not the very solutions themselves which he is looking for.

The book is arranged "in accordance with a scheme laid down as that of Confucius himself in 'The Great Learning.'" It consists of seven chapters the first five of which contain the Confucian ethics proper, while the sixth deals with what may be called Confucian aesthetics, and the seventh covers a mixture of metaphysics and religion in which Confucius occasionally indulged in connection with his discussions of rites and ceremonies.

The basis of the ethics of Confucius is found in the opening chapter. All rules of conduct have for their foundation an ideal which is supposed to be cherished by every normal human being. This ideal is the development of the 'Superior Man,' a man superior, not in the sense of the Nietzschean 'Super-Man,' but in that he is everlastingly striving to be superior to his own past and present self with no other end in view than that of the possibility of bringing the highest order of harmony to mankind. With this as the ideal, every conduct must serve as a means to attain this end. Thus we have the rules of living carefully laid down in the following chapters on "Self-Development," "General Human Relations," "The Family," and "The State." The State being the last stage before reaching the goal of universal peace.

The entire book consists mainly of quotations, with running notes serving as connections between passages cited. These notes, however short they are, constitute the main feature of this book, as they render the ancient, Oriental, scattered writing in a modern, Occidental, scientific form, which makes the book more interesting and easier to understand than many other disconnected and ill-arranged translations.

The only defect, a defect common to all translations, is that some of the passages as translated fail to express the full significance of the originals. This, however, can be appreciated only by students of both languages. On the whole there are few such passages.

KIA-LOK YEN.

University of Chicago.

WAR AND CIVILIZATION. By The Right Hon. J. M. Robertson, M.P. London: George Allen & Unwin, 1916. Pp. 160.

This book is a reply to a work by Gustav F. Steffen, Professor of Economics and Sociology at the University of Stockholm, which has been translated under the title of *Krieg und Kultur* and widely circulated in Germany. Mr. Robertson emphatically and, on the whole, truly, states that 'the whole drift of serious British politics is utterly opposed to any dreams of further expansion'; though here allowance must be made for the fury generated by the conduct of the war, and for the decivilizing process which in all countries gives the public ear and the administrative

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power to imperialists and militarists of the type of General Bernhardi. The German assumptions regarding race and nationality, which underlie the misplaced ingenuity of 'Völkerpsychologie' are tellingly exposed; anyone who knows Germany, especially German education and journalism, must remember those endless pedantic condemnations of the 'frivolous' French, the 'mercenary' English, the 'emotional, incoherent, barbaric' Slavs. It is interesting to note that both Professor Steffen and Mr. Robertson claim to be among 'those who recognize in the Socialist ideal, the highest ethical and the highest economic, conceptions of civilized life.' In reply to the 'Kultur' argument, the British politician certainly scores here: "Norwegians and Swiss may be content to find happiness in culture; not so the German, who claims to be the most 'cultured of all.'"

F. W. S. BROWNE.

London, England.

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